

HOUSE BILL No. 4392

March 7, 1989, Introduced by Reps. Runco, DeLange, Brown, Middaugh, Krause, Hoffman, Stacey, Gilmer, Van Singel, Camp and Weeks 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; and to add sections 427 and 428.

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 and sections 427 and 428 are added 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.

1 (b) Fail to acknowledge promptly or to act reasonably and
2 promptly upon communications with respect to a claim arising
3 under a certificate.

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

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

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

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

13 (g) Compel members to institute litigation to recover
14 amounts due under a certificate by offering substantially less
15 than the amounts due.

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

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

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

1 (k) Delay the investigation or payment of a claim by
2 requiring a member, or the provider of health care services to
3 the member, to submit a preliminary claim and then requiring sub-
4 sequent submission of a formal claim, seeking solely the duplica-
5 tion of a verification.

6 (l) Fail to promptly provide a reasonable explanation of the
7 basis for denial of a claim or for the offer of a compromise
8 settlement.

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

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

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

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

26 (c) Offer to give or pay, or give or pay, directly or
27 indirectly, a rebate or part of the premium, or an advantage with

1 respect to the furnishing of health care benefits or
2 administrative or other services offered by the corporation
3 except as reflected in the rate and expressly provided in the
4 certificate.

5 (d) Make, issue, or circulate, or cause to be made, issued,
6 or circulated, any estimate, illustration, circular, or statement
7 misrepresenting the terms of a certificate or contract for admin-
8 istrative or other services, the benefits thereunder, or the true
9 nature thereof.

10 (e) Make a misrepresentation or incomplete comparison,
11 whether oral or written, between certificates of the corporation
12 or between certificates or contracts of the corporation and
13 another health care corporation, health maintenance organization,
14 or other person.

15 (3) A HEALTH CARE CORPORATION OR AN EMPLOYEE OR AGENT OF A
16 HEALTH CARE CORPORATION SHALL NOT INDUCE A PERSON TO CANCEL OR
17 OTHERWISE TERMINATE A LONG-TERM CARE CERTIFICATE OR COVERAGE AND
18 REPLACE IT WITH A LONG-TERM CARE CERTIFICATE UNLESS THERE IS A
19 SUBSTANTIAL DIFFERENCE IN COST FAVORABLE TO THE SUBSCRIBER OR THE
20 SUBSCRIBER HAS PREVIOUSLY DEMONSTRATED A DISSATISFACTION WITH THE
21 SERVICE PRESENTLY BEING RECEIVED FROM THE CURRENT HEALTH CARE
22 CORPORATION, INSURER, AGENT, SOLICITOR, OR COUNSELOR. A HEALTH
23 CARE CORPORATION OR AN EMPLOYEE OR AGENT OF A HEALTH CARE CORPO-
24 RATION MAY REPLACE A LONG-TERM CARE CERTIFICATE OR COVERAGE WITH
25 A LONG-TERM CARE CERTIFICATE THAT HAS FEWER AGGREGATE BENEFITS
26 ONLY IF THE PROSPECTIVE SUBSCRIBER SIGNS AN ACKNOWLEDGMENT THAT
27 IT IS UNDERSTOOD THAT THE PROSPECTIVE SUBSCRIBER WILL RECEIVE

1 LESS BENEFITS UNDER THE NEW CERTIFICATE THAN UNDER THE CURRENT
2 CERTIFICATE OR COVERAGE. A HEALTH CARE CORPORATION OR AN
3 EMPLOYEE OR AGENT OF A HEALTH CARE CORPORATION WHO VIOLATES THIS
4 SUBSECTION SHALL BE SUBJECT TO THE PENALTY PROVISIONS OF THIS
5 SECTION AND, IN ADDITION, SHALL PROVIDE TO THE SUBSCRIBER THE
6 GREATER OF THE FOLLOWING:

7 (A) BENEFITS THE SUBSCRIBER WOULD HAVE BEEN ENTITLED TO
8 UNDER THE REPLACED LONG-TERM CARE CERTIFICATE OR COVERAGE.

9 (B) BENEFITS THE INSURED IS ENTITLED TO UNDER THE CURRENT
10 LONG-TERM CARE CERTIFICATE.

11 (4) ~~-(3)-~~ Nothing in subsection (2) OR (3) shall prevent a
12 health care corporation from readjusting the rates charged to a
13 subscriber group which is experience-rated based on the previous
14 claims of the group.

15 (5) ~~-(4)-~~ The commissioner shall allow a health care corpo-
16 ration to participate in any trade practice conference for dis-
17 ability insurers convened under section 2047 of Act No. 218 of
18 the Public Acts of 1956, being section 500.2047 of the Michigan
19 Compiled Laws, and may bind a health care corporation to any
20 rules promulgated as provided in that section.

21 (6) ~~-(5)-~~ Nothing in this section shall alter or supersede
22 any provider class plan established pursuant to part 5.

23 (7) ~~-(6)-when~~ IF the commissioner has probable cause to
24 believe that a health care corporation is violating, or has vio-
25 lated subsection (1), indicating a persistent tendency to engage
26 in conduct prohibited by that subsection, or has probable cause
27 to believe that a health care corporation is violating, or has

1 violated subsection (2) OR (3), he or she shall give written
2 notice to the corporation, pursuant to the administrative proce-
3 dures act OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969, BEING
4 SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED LAWS, setting
5 forth the general nature of the complaint against the corporation
6 and the proceedings contemplated under this section. Before the
7 issuance of a notice of hearing, the staff of the bureau of
8 insurance responsible for the matters which would be at issue in
9 the hearing shall give the corporation an opportunity to confer
10 and discuss the possible complaint and proceedings in person with
11 the commissioner or a representative of the commissioner, and the
12 matter may be disposed of summarily upon agreement of the
13 parties. This subsection shall not be construed to diminish the
14 right of a person to bring an action for damages under this
15 section.

16 (8) ~~(7)~~ A hearing held pursuant to subsection ~~(6)~~ (7)
17 shall be held in accordance with section 2030 of THE INSURANCE
18 CODE OF 1956, Act No. 218 of the Public Acts of 1956, as amended,
19 being section 500.2030 of the Michigan Compiled Laws. The hear-
20 ing shall be held pursuant to the administrative procedures act
21 OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969. If, after the
22 hearing, the commissioner determines that the health care corpo-
23 ration is violating, or has violated subsection (1), indicating a
24 persistent tendency to engage in conduct prohibited by that sub-
25 section, or ~~has probable cause to believe that the corporation~~
26 is violating, or has violated subsection (2) OR (3), the
27 commissioner shall reduce his or her findings and decision to

1 writing, and shall issue and cause to be served upon the
2 corporation a copy of the findings and an order requiring the
3 corporation to cease and desist from engaging in the prohibited
4 activity. The commissioner may at any time, by order, and after
5 notice and opportunity for a hearing, reopen and alter, modify,
6 or set aside, in whole or in part, an order issued by him or her
7 under this subsection, when in his or her opinion conditions of
8 fact or law have so changed as to require that action, or if the
9 public interest so requires.

10 (9) ~~-(8)-~~ A health care corporation which violates a cease
11 and desist order of the commissioner issued under subsection
12 ~~-(7)-~~ (8), after notice and an opportunity for a hearing, and
13 upon order of the commissioner, may be subject to a civil fine of
14 not more than \$10,000.00 for each violation.

15 (10) ~~-(9)-~~ In addition to other remedies provided by law, an
16 aggrieved member may bring an action for actual monetary damages
17 sustained as a result of a violation of this section. If suc-
18 cessful on the merits, the member shall be awarded actual mone-
19 tary damages or \$200.00, whichever is greater, together with rea-
20 sonable attorneys' fees. If the health care corporation shows by
21 a preponderance of the evidence that a violation of this section
22 resulted from a bona fide error notwithstanding the maintenance
23 of procedures reasonably adapted to avoid the error, the amount
24 of recovery shall be limited to actual monetary damages.

25 SEC. 427. A HEALTH CARE CORPORATION THAT OFFERS LONG-TERM
26 CARE COVERAGE SHALL PROVIDE TO A PROSPECTIVE APPLICANT BEFORE
27 APPLICATION AND TO A NONGROUP SUBSCRIBER UPON REQUEST BEFORE

1 RENEWAL A SUMMARY OF BENEFITS AND SHALL OBTAIN AN ACKNOWLEDGMENT
 2 OF RECEIPT OF THE SUMMARY ON THE APPLICATION FORM OR RENEWAL FORM
 3 BY OBTAINING THE SIGNATURES OF THE AGENT OR REPRESENTATIVE AND
 4 THE APPLICANT. THE SUMMARY OF BENEFITS SHALL BE IN SUBSTANTIALLY
 5 THE FOLLOWING FORM:

6 LONG-TERM CARE CERTIFICATE SUMMARY OF BENEFITS

7	CATEGORY	DEFINITION	COMPANY BENEFITS
8	SKILLED NURSING CARE	REQUIRES DAILY ATTENDANCE,	\$ _____ PER DAY
9		MONITORING, EVALUATION	
10		AND/OR OBSERVATION BY	
11		LICENSED HEALTH PERSONNEL	
12			
13	MAXIMUM DAYS PAYABLE		____ DAYS
14			
15	INTERMEDIATE/BASIC/	IS ALL OTHER CARE WHICH	\$ _____ PER DAY
16	CUSTODIAL NURSING	INCLUDES ASSISTANCE IN	
17	CARE	DAILY ACTIVITIES OF DAILY	
18		LIVING THAT CAN BE	
19		PROVIDED BY PERSONS	
20		WITHOUT MEDICAL SKILL	
21			
22	MAXIMUM DAYS PAYABLE		____ DAYS
23			
24	HOME HEALTH	WILL THIS CERTIFICATE	____ YES ____ NO
25	BENEFITS:	COVER HOME CARE AND WHAT	
26	--DAILY BENEFIT	ARE THE RESTRICTIONS?	\$ ____ PER DAY
27	--MAXIMUM DAYS		
28	PAYABLE		____ NO. OF DAYS
29	--RESTRICTIONS		
30			
31	BASIC CUSTODIAL	WILL THIS CERTIFICATE	____ YES ____ NO
32	NURSING CARE:	COVER BASIC CUSTODIAL	
33	--DAILY BENEFIT	NURSING CARE AND WHAT	\$ ____ PER DAY
34	--MAXIMUM DAYS	ARE THE RESTRICTIONS?	
35	PAYABLE		____ NO. OF DAYS
36	--RESTRICTIONS		
37			

1 MAXIMUM NUMBER OF 2 DAYS OF SKILLED AND/ 3 OR INTERMEDIATE CARE 4 TO BE ELIGIBLE FOR 5 BASIC CARE 6 7	SOME CERTIFICATES MAY REQUIRE THAT YOU RECEIVE SKILLED OR INTERMEDIATE CARE BEFORE YOU CAN RECEIVE COVERAGE FOR BASIC CARE	
8 PRIOR HOSPITALIZA- 9 TION 10 11 12 13 14 15	CERTIFICATES MAY NOT REQUIRE THAT YOU BE PLACED IN A HOSPITAL FOR A CERTAIN NUMBER OF DAYS BEFORE YOU CAN RECEIVE COVERAGE FOR NURSING HOME CARE	
16 DAY BENEFITS BEGIN 17 18 19 20	AFTER YOU HAVE ENTERED THE NURSING HOME, WHEN WILL THE CERTIFICATE START TO PAY FOR COVERAGE?	
21 TYPE OF FACILITY: 22 --SKILLED 23 24 --INTERMEDIATE 25 26	WILL THIS CERTIFICATE COVER SKILLED CARE? WILL THIS CERTIFICATE COVER BASIC CARE?	 YES NO YES NO
27 ORGANICALLY BASED 28 MENTAL CONDITIONS 29 COVERED 30 31	CONDITIONS SUCH AS ONE OF THE DEMENTIAS (E.G., ALZHEIMER'S), ARE THEY COVERED?	YES NO
32 PREEXISTING CON- 33 DITIONS WAITING 34 PERIOD 35 36 37 38 39 40 41 42 43 44	IF YOU HAVE BEEN TREATED IN THE LAST 6 MONTHS FOR A CONDITION, WILL THIS CERTIFICATE COVER YOUR TREATMENT? DOES THIS CERTIFICATE COVER YOU ONLY AFTER A WAITING PERIOD? HOW LONG IS THE WAITING PERIOD?	YES NO YES NO _____

1 PHYSICIAN'S ORDER 2 3 4 5	IS A DOCTOR'S ORDER FOR TREATMENT NEEDED BEFORE YOUR CERTIFICATE WILL GIVE YOU COVERAGE?	___ YES ___ NO
6 MOTOR VEHICLE 7 ACCIDENTS 8 9 10 11 12	WILL THIS CERTIFICATE PROVIDE COVERAGE FOR LONG-TERM CARE NEEDED AS A RESULT OF A MOTOR VEHICLE ACCIDENT?	___ YES ___ NO
13 EVIDENCE OF 14 INSURABILITY 15 16 17 18 19	IS A PHYSICAL EXAMINATION REQUIRED? DO YOU HAVE TO ANSWER A SERIES OF HEALTH QUESTIONS?	___ YES ___ NO ___ YES ___ NO
20 GUARANTEED RENEWAL 21 22 23 24	AS LONG AS YOU PAY YOUR PREMIUMS ON TIME, WILL THE CORPORATION CONTINUE TO COVER YOU?	___ YES ___ NO
25 WAIVER OF PREMIUM 26 27 28 29	ARE THERE CIRCUMSTANCES UNDER WHICH YOU RECEIVE COVERAGE, BUT DO NOT HAVE TO PAY THE PREMIUM?	___ YES ___ NO

30
31 I HAVE READ THIS OUTLINE AND UNDERSTAND THAT THIS OUTLINE IS
32 FOR MY OWN USE AND IS MINE TO KEEP.

33

34

PROSPECTIVE APPLICANT'S SIGNATURE

35

DATE _____

36

SEC. 428. AN APPLICATION FOR A LONG-TERM CARE CERTIFICATE
37 SHALL CONTAIN THE FOLLOWING STATEMENT PRINTED, STAMPED, OR AS
38 PART OF A STICKER PERMANENTLY AFFIXED TO THE APPLICATION IN
39 CAPITAL LETTERS ON THE FIRST PAGE:

1 "FOR ADDITIONAL INFORMATION ABOUT LONG-TERM
2 CARE COVERAGE WRITE TO THE MICHIGAN INSURANCE
3 BUREAU, P.O. BOX 30220, LANSING, MI 48909 OR
4 CALL THE AREA AGENCY ON AGING IN YOUR
5 COMMUNITY."

6 Section 2. This amendatory act shall not take effect unless
7 Senate Bill No. _____ or House Bill No. 4391 (request
8 no. 00846'89 *) of the 85th Legislature is enacted into law.