

SENATE BILL No. 2

January 11, 1989, Introduced by Senators N. SMITH and DILLINGHAM
and referred to the Committee on Commerce and Technology.

A bill to amend section 6 of Act No. 233 of the Public Acts
of 1984, entitled
"Prudent purchaser act,"
as amended by Act No. 282 of the Public Acts of 1988, being sec-
tion 550.56 of the Michigan Compiled Laws; and to add section
3a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 6 of Act No. 233 of the Public Acts of
2 1984, as amended by Act No. 282 of the Public Acts of 1988, being
3 section 550.56 of the Michigan Compiled Laws, is amended and sec-
4 tion 3a is added to read as follows:

5 SEC. 3A. (1) A PRUDENT PURCHASER AGREEMENT AND A CONTRACT
6 PROVIDING COVERAGE AUTHORIZED BY THIS ACT WHICH CONTAINS A
7 PROVISION FOR ARBITRATION OF A DISPUTE AS TO THE MALPRACTICE OF A
8 MEMBER OR MEMBERS OF A PROVIDER PANEL SHALL INCLUDE A STATEMENT

1 OF THAT FACT IN 12-POINT BOLDFACE TYPE. SUBJECT TO SUBSECTION
2 (5), THE CONTRACT PROVIDING COVERAGE AUTHORIZED BY THIS ACT SHALL
3 ALSO PROVIDE THAT THE PERSON WHO HAS COVERAGE AUTHORIZED BY THIS
4 ACT MAY REVOKE THE AGREEMENT TO ARBITRATE AS IT APPLIES TO THAT
5 PERSON WITHIN 60 DAYS AFTER THE EFFECTIVE DATE OF COVERAGE UNDER
6 THE CONTRACT AND THAT EXECUTION OF THE AGREEMENT TO ARBITRATE IS
7 NOT A PREREQUISITE TO HEALTH CARE OR TREATMENT, AND SHALL INCLUDE
8 A STATEMENT OF THOSE FACTS IN 12-POINT BOLDFACE TYPE. THE RIGHT
9 OF THE PERSON WHO HAS COVERAGE AUTHORIZED BY THIS ACT TO REVOKE
10 THE AGREEMENT TO ARBITRATE SHALL BE EXERCISED ONLY AS PROVIDED IN
11 SUBSECTIONS (6) AND (7). AN ORGANIZATION SHALL ALSO DEVELOP AND
12 IMPLEMENT A PROCEDURE FOR NOTIFYING PERSONS TO WHOM COVERAGE
13 AUTHORIZED BY THIS ACT IS OFFERED AND POTENTIAL PROVIDER PANEL
14 MEMBERS OF THE PROVISION FOR ARBITRATION. THE PROCEDURE SHALL
15 INCLUDE, AT A MINIMUM, BOTH OF THE FOLLOWING:

16 (A) THAT ENROLLMENT CARDS OR CONTRACTS USED BY THE ORGANI-
17 ZATION FOR COVERAGE AUTHORIZED BY THIS ACT AND FORMS FOR PRUDENT
18 PURCHASER AGREEMENTS CONTAIN, ADJACENT TO THE SIGNATURE LINE AND
19 IN 12-POINT BOLDFACE TYPE, A STATEMENT DESCRIBING THE ARBITRATION
20 REQUIREMENT.

21 (B) THAT THE ORGANIZATION PROVIDE EACH PERSON WHO HAS COVER-
22 AGE AUTHORIZED BY THIS ACT WITH AN INFORMATIONAL BROCHURE WHICH
23 CLEARLY EXPLAINS THE ARBITRATION AGREEMENT AND REVOCATION
24 PROVISION.

25 (2) ARBITRATION OF A DISPUTE BETWEEN A MEMBER OR MEMBERS OF
26 A PROVIDER PANEL AND A PERSON WHO HAS COVERAGE AUTHORIZED BY THIS
27 ACT AS TO THE MALPRACTICE OF THE MEMBER OR MEMBERS OF THE

1 PROVIDER PANEL SHALL BE CONDUCTED PURSUANT TO SECTIONS 5043 TO
2 5059 OF CHAPTER 50A OF THE REVISED JUDICATURE ACT OF 1961, ACT
3 NO. 236 OF THE PUBLIC ACTS OF 1961, BEING SECTIONS 600.5043 TO
4 600.5059 OF THE MICHIGAN COMPILED LAWS.

5 (3) IF A CONTRACT PROVIDING COVERAGE AUTHORIZED BY THIS ACT
6 INCLUDES COVERAGE FOR A MINOR, THE CONTRACT SHALL NOT BE SUBJECT
7 TO DISAFFIRMANCE IF SIGNED OR OTHERWISE AGREED TO BY THE MINOR'S
8 PARENT OR GUARDIAN.

9 (4) A PRUDENT PURCHASER AGREEMENT OR A CONTRACT PROVIDING
10 COVERAGE AS AUTHORIZED BY THIS ACT WHICH HAS AN ARBITRATION PRO-
11 VISION WHICH IS IN COMPLIANCE WITH SUBSECTION (1) SHALL NOT BE
12 CONSIDERED A CONTRACT OF ADHESION OR UNCONSCIONABLE OR OTHERWISE
13 IMPROPER BECAUSE OF SUCH PROVISION. THE ARBITRATION PROVISION
14 SHALL APPLY TO ALL PERSONS COVERED UNDER THE CONTRACT, INCLUDING
15 THEIR SPOUSES AND CHILDREN, BOTH BORN AND IN UTERO, AND, IN THE
16 CASE OF A MALPRACTICE ACTION INVOLVING THE DEATH OF A PERSON COV-
17 ERED UNDER THE CONTRACT, ALL PERSONS TO WHOM THE PERSON COVERED
18 UNDER THE CONTRACT, BY LAW, OWED A DUTY OF SUPPORT AT THE TIME OF
19 HIS OR HER DEATH.

20 (5) AN ORGANIZATION MAY OFFER ECONOMIC INCENTIVES IN CONSID-
21 ERATION OF A PERSON WHO HAS COVERAGE AUTHORIZED BY THIS ACT
22 AGREEING NOT TO EXERCISE THE RIGHT TO REVOKE THE AGREEMENT TO
23 ARBITRATE CONTAINED IN THE CONTRACT PROVIDING COVERAGE AUTHORIZED
24 BY THIS ACT, AS PROVIDED IN SUBSECTION (1).

25 (6) THE RIGHT OF THE PERSON WHO HAS COVERAGE AUTHORIZED BY
26 THIS ACT TO REVOKE AN AGREEMENT TO ARBITRATE AS DESCRIBED IN
27 SUBSECTION (1) SHALL BE EXERCISED PURSUANT TO EITHER THIS

1 SUBSECTION OR SUBSECTION (7). UPON REQUEST OF THE PERSON WHO HAS
2 COVERAGE AUTHORIZED BY THIS ACT, THE ORGANIZATION SHALL PROVIDE A
3 FORM FOR THE PERSON TO SIGN INDICATING THE PERSON'S REVOCATION OF
4 THE AGREEMENT TO ARBITRATE. THE FORM SHALL BE PRESCRIBED BY THE
5 COMMISSIONER, AND SHALL CONTAIN AN ORIGINAL AND 1 COPY. THE
6 PERSON WHO HAS COVERAGE AUTHORIZED BY THIS ACT SHALL SIGN THE
7 FORM, SEND THE ORIGINAL COPY TO THE ORGANIZATION BY REGISTERED
8 MAIL, AND SHALL RETAIN THE COPY.

9 (7) AS AN ALTERNATIVE TO THE REVOCATION PROCEDURE SET FORTH
10 IN SUBSECTION (6), A PERSON WHO HAS COVERAGE AUTHORIZED BY THIS
11 ACT MAY REVOKE THE AGREEMENT TO ARBITRATE BY NOTIFYING THE ORGA-
12 NIZATION IN WRITING BY REGISTERED MAIL OF THE PERSON'S INTENTION
13 TO REVOKE THE ARBITRATION AGREEMENT. THE NOTICE SHALL CONTAIN AT
14 A MINIMUM, THE PERSON'S NAME, ADDRESS, AND CONTRACT NUMBER, IF
15 ANY, AND A STATEMENT OF THE PERSON'S INTENT TO REVOKE THE ARBI-
16 TRATION AGREEMENT.

17 (8) IF A PERSON WHO HAS COVERAGE AUTHORIZED BY THIS ACT IS
18 ALSO COVERED AS A DEPENDENT UNDER ANOTHER HEALTH CARE COVERAGE OR
19 BENEFIT PLAN, AND THE INDIVIDUAL REVOKES THE AGREEMENT TO ARBI-
20 TRATE CONTAINED IN THE CONTRACT PROVIDING COVERAGE AUTHORIZED BY
21 THIS ACT, THE INDIVIDUAL SHALL NOT BE BOUND BY AN ARBITRATION
22 AGREEMENT CONTAINED IN ANY OTHER HEALTH CARE COVERAGE OR BENEFIT
23 PLAN UNDER WHICH THE INDIVIDUAL IS COVERED.

24 (9) THE COMMISSIONER SHALL SUBMIT A REPORT TO THE LEGISLA-
25 TURE ON THE EFFECT OF ARBITRATION AGREEMENTS CONTAINED IN CON-
26 TRACTS PROVIDING COVERAGE AUTHORIZED BY THIS ACT INCLUDING, BUT
27 NOT LIMITED TO, COST SAVINGS REALIZED BY ORGANIZATIONS AS A

1 RESULT OF INCLUDING ARBITRATION AGREEMENTS IN THE CONTRACTS. THE
2 REPORT REQUIRED UNDER THIS SUBSECTION SHALL BE SUBMITTED NOT
3 LATER THAN THE EXPIRATION OF 3 YEARS AFTER THE EFFECTIVE DATE OF
4 THIS SECTION.

5 (10) AS USED IN THIS SECTION, "MALPRACTICE" MEANS A DISPUTE,
6 CONTROVERSY, OR ISSUE ARISING OUT OF OR RESULTING FROM INJURY TO,
7 OR THE DEATH OF, AN INDIVIDUAL WHICH WAS CAUSED BY AN ERROR,
8 OMISSION, OR NEGLIGENCE IN THE PERFORMANCE OF SERVICES BY A
9 HEALTH PROFESSIONAL, HEALTH FACILITY OR AGENCY, OR THEIR AGENT OR
10 BASED ON A CLAIMED PERFORMANCE OF SUCH SERVICES WITHOUT CONSENT,
11 IN BREACH OF WARRANTY, OR IN VIOLATION OF CONTRACT.

12 Sec. 6. (1) An organization which enters into prudent pur-
13 chaser agreements with health care providers under this act shall
14 report with its annual statement, or on a date set by the commis-
15 sioner, on standard forms prescribed by the commissioner the fol-
16 lowing information:

17 (a) The number of natural persons receiving health care ben-
18 efits under prudent purchaser agreements.

19 (b) The number of individual and group contracts providing
20 health care services pursuant to prudent purchaser agreements.

21 (c) The dollar volume of business conducted under prudent
22 purchaser agreements.

23 (D) WHETHER OR NOT THE FORMS OF THE PRUDENT PURCHASER AGREE-
24 MENTS OR CONTRACTS PROVIDING COVERAGE AUTHORIZED BY THIS ACT CON-
25 TAIN ARBITRATION PROVISIONS AS DESCRIBED IN SECTION 3A.

1 (2) Information received by the commissioner pursuant to
2 this section shall be made available to appropriate state
3 agencies for purposes of reviewing and evaluating this act.

4 (3) The commissioner and state agencies shall ensure the
5 confidentiality of information containing data which may be asso-
6 ciated with a particular organization. Information pertaining to
7 the diagnosis, treatment, or health of any person receiving
8 health care benefits under prudent purchaser agreements shall be
9 confidential and shall not be disclosed to any person, except to
10 the extent that it may be necessary to carry out the purposes of
11 this act; upon the express consent of the person; pursuant to
12 statute or court order for the production of evidence or the dis-
13 covery thereof; or in the event of claim examination or litiga-
14 tion between the person and the organization, to the extent that
15 the data or information is pertinent.