

# SENATE BILL No. 12

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

A bill to amend sections 204 and 401 of Act No. 350 of the  
Public Acts of 1980, entitled

"The nonprofit health care corporation reform act,"

section 401 as amended by Act No. 66 of the Public Acts of 1984,  
being sections 550.1204 and 550.1401 of the Michigan Compiled  
Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 204 and 401 of Act No. 350 of the Public  
2 Acts of 1980, section 401 as amended by Act No. 66 of the Public  
3 Acts of 1984, being sections 550.1204 and 550.1401 of the  
4 Michigan Compiled Laws, are amended to read as follows:

5 Sec. 204. (1) Before entering into contracts or securing  
6 applications of subscribers, the persons incorporating a health  
7 care corporation shall file all of the following in the office of  
8 the commissioner:

1 (a) Three copies of the articles of incorporation, with the  
2 certificate of the attorney general required under section 202(3)  
3 attached.

4 (b) A statement showing in full detail the plan upon which  
5 the corporation proposes to transact business.

6 (c) A copy of all certificates to be issued to subscribers.

7 (d) A copy of the financial statements of the corporation.

8 (e) Proposed advertising to be used in the solicitation of  
9 certificates for subscribers.

10 (f) A copy of the bylaws.

11 (g) A copy of all proposed contracts and reimbursement  
12 methods.

13 (2) The commissioner shall examine the statements and docu-  
14 ments filed under subsection (1), may conduct any investigation  
15 which he or she considers necessary, may request additional oral  
16 and written information from the incorporators, and may examine  
17 under oath any persons interested in or connected with the pro-  
18 posed health care corporation. The commissioner shall ascertain  
19 whether all of the following conditions are met:

20 ~~.....(a) The solicitation of certificates will not work a fraud~~  
21 upon the persons solicited by the corporation.

22 (b) The rates to be charged and the benefits to be provided  
23 are adequate, equitable, and not excessive, as defined in section  
24 609.

25 (c) The amount of money actually available for working capi-  
26 tal is sufficient to carry all acquisition costs and operating  
27 expenses for a reasonable period of time from the date of

1 issuance of the certificate of authority, and is not less than  
2 \$500,000.00 or a greater amount, if the commissioner considers it  
3 necessary.

4 (d) The amounts contributed as the working capital of the  
5 corporation are payable only out of amounts in excess of minimum  
6 required reserves of the corporation.

7 (e) Adequate and reasonable reserves are provided, as  
8 defined in section 205.

9 (3) If the commissioner finds that the conditions prescribed  
10 in subsection (2) are met, the commissioner shall do all of the  
11 following:

12 (a) Return to the incorporators 1 copy of the articles of  
13 incorporation, certified for filing with the chief officer of the  
14 department of commerce or of any other agency or department  
15 authorized by law to administer THE BUSINESS CORPORATION ACT, Act  
16 No. 284 of the Public Acts of 1972, as amended, being sections  
17 450.1101 to 450.2099 of the Michigan Compiled Laws, or his or her  
18 designated representative, and 1 copy of the articles of incorpo-  
19 ration certified for the records of the corporation itself.

20 (b) Retain 1 copy of the articles of incorporation for the  
21 commissioner's office files.

22 (c) Deliver to the corporation a certificate of authority to  
23 commence business and to issue certificates which have been  
24 approved by the commissioner, or which are exempted from prior  
25 approval pursuant to section 607(2) or (7), entitling subscribers  
26 to certain health care benefits.

1 (4) IF A HEALTH CARE CORPORATION ADDS AN ARBITRATION  
2 PROVISION, AS DESCRIBED IN SECTION 401(6), TO A CERTIFICATE  
3 ISSUED TO SUBSCRIBERS, THE HEALTH CARE CORPORATION SHALL NOTIFY  
4 THE COMMISSIONER WITHIN 30 DAYS AFTER THE EFFECTIVE DATE OF THE  
5 ARBITRATION PROVISION.

6 Sec. 401. (1) A health care corporation established, main-  
7 tained, or operating in this state shall offer health care bene-  
8 fits to all residents of this state, and may offer other health  
9 care benefits as the corporation specifies with the approval of  
10 the commissioner.

11 (2) A health care corporation may limit the health care ben-  
12 efits that it will furnish, except as provided in this act, and  
13 may divide the health care benefits which it elects to furnish  
14 into classes or kinds.

15 (3) A health care corporation shall not do any of the  
16 following:

17 (a) Refuse to issue or continue a certificate to 1 or more  
18 residents of this state, except while the individual, based on a  
19 transaction or occurrence involving a health care corporation, is  
20 serving a sentence arising out of a charge of fraud, is satisfy-  
21 ing a civil judgment, or is making restitution pursuant to a vol-  
22 untary payment agreement between the corporation and the  
23 individual.

24 (b) Refuse to continue in effect a certificate with 1 or  
25 more residents of this state, other than for failure to pay  
26 amounts due for a certificate, except as allowed for refusal to  
27 issue a certificate under subdivision (a).

1 (c) Limit the coverage available under a certificate,  
2 without the prior approval of the commissioner, unless the limi-  
3 tation is as a result of: an agreement with the person paying  
4 for the coverage; an agreement with the individual designated by  
5 the persons paying for or contracting for the coverage; or a col-  
6 lective bargaining agreement.

7 (4) Nothing in subsection (3) shall prevent a health care  
8 corporation from denying to a resident of this state coverage  
9 under a certificate for any of the following grounds:

10 (a) That the individual was not a member of a group which  
11 had contracted for coverage under this certificate.

12 (b) That the individual is not a member of a group with a  
13 size greater than a minimum size established for a certificate  
14 pursuant to sound underwriting requirements.

15 (c) That the individual does not meet requirements for cov-  
16 erage contained in a certificate.

17 (5) A certificate may provide for the coordination of bene-  
18 fits, subrogation, and the nonduplication of benefits. Savings  
19 realized by the coordination of benefits, subrogation, and nondu-  
20 plication of benefits shall be reflected in the rates for those  
21 certificates. If a group certificate issued by the corporation  
22 contains a coordination of benefits provision, the benefits shall  
23 be payable pursuant to the coordination of benefits act, ACT  
24 NO. 64 OF THE PUBLIC ACTS OF 1984, BEING SECTIONS 550.251 TO  
25 550.255 OF THE MICHIGAN COMPILED LAWS.

26 (6) A CERTIFICATE MAY CONTAIN A PROVISION FOR THE  
27 ARBITRATION OF A DISPUTE AS TO THE MALPRACTICE OF A PARTICIPATING

1 PROVIDER. A CERTIFICATE WHICH CONTAINS AN ARBITRATION PROVISION  
2 SHALL INCLUDE A STATEMENT OF THAT FACT IN 12-POINT BOLDFACE  
3 TYPE. SUBJECT TO SUBSECTION (7), THE CERTIFICATE SHALL ALSO PRO-  
4 VIDE THAT THE SUBSCRIBER MAY REVOKE THE AGREEMENT TO ARBITRATE AS  
5 IT APPLIES TO THE SUBSCRIBER WITHIN 60 DAYS AFTER THE EFFECTIVE  
6 DATE OF COVERAGE UNDER THE CERTIFICATE AND THAT EXECUTION OF THE  
7 AGREEMENT TO ARBITRATE IS NOT A PREREQUISITE TO HEALTH CARE OR  
8 TREATMENT, AND SHALL INCLUDE A STATEMENT OF THOSE FACTS IN  
9 12-POINT BOLDFACE TYPE. THE RIGHT OF THE SUBSCRIBER TO REVOKE  
10 THE AGREEMENT TO ARBITRATE SHALL BE EXERCISED ONLY AS PROVIDED IN  
11 SUBSECTIONS (8) AND (9). A HEALTH CARE CORPORATION SHALL ALSO  
12 DEVELOP AND IMPLEMENT A PROCEDURE FOR NOTIFYING POTENTIAL SUB-  
13 SCRIBERS OF THE PROVISION FOR ARBITRATION. THE PROCEDURE SHALL  
14 INCLUDE, AT A MINIMUM, THAT ENROLLMENT CARDS OR CERTIFICATES USED  
15 BY THE HEALTH CARE CORPORATION CONTAIN, ADJACENT TO THE SIGNATURE  
16 LINE AND IN 12-POINT BOLDFACE TYPE, A STATEMENT DESCRIBING THE  
17 ARBITRATION REQUIREMENT, AND THAT THE HEALTH CARE CORPORATION  
18 PROVIDE EACH SUBSCRIBER COVERED UNDER THE CERTIFICATE WITH AN  
19 INFORMATIONAL BROCHURE WHICH CLEARLY EXPLAINS THE ARBITRATION  
20 AGREEMENT AND REVOCATION PROVISION. ARBITRATION OF A DISPUTE  
21 BETWEEN A MEMBER AND A PARTICIPATING PROVIDER SHALL BE CONDUCTED  
22 PURSUANT TO SECTIONS 5043 TO 5059 OF CHAPTER 50A OF THE REVISED  
23 JUDICATURE ACT OF 1961, ACT NO. 236 OF THE PUBLIC ACTS OF 1961,  
24 BEING SECTIONS 600.5043 TO 600.5059 OF THE MICHIGAN COMPILED  
25 LAWS. IF A CERTIFICATE INCLUDES COVERAGE FOR A MINOR, THE CER-  
26 TIFICATE SHALL NOT BE SUBJECT TO DISAFFIRMANCE IF SIGNED OR  
27 OTHERWISE AGREED TO BY THE MINOR'S PARENT OR GUARDIAN. A

1 ARBITRATION PROVISION WHICH IS IN COMPLIANCE WITH THIS SUBSECTION  
2 SHALL NOT BE CONSIDERED A CONTRACT OF ADHESION OR UNCONSCIONABLE  
3 OR OTHERWISE IMPROPER BECAUSE OF SUCH PROVISION. THE ARBITRATION  
4 PROVISION SHALL APPLY TO ALL MEMBERS COVERED UNDER THE CERTIFI-  
5 CATE, INCLUDING THEIR SPOUSES AND CHILDREN, BOTH BORN AND IN  
6 UTERO, AND, IN THE CASE OF A MALPRACTICE ACTION INVOLVING THE  
7 DEATH OF A MEMBER COVERED UNDER THE CERTIFICATE, ALL PERSONS TO  
8 WHOM THE MEMBER, BY LAW, OWED A DUTY OF SUPPORT AT THE TIME OF  
9 HIS OR HER DEATH. AS USED IN THIS SUBSECTION, "MALPRACTICE"  
10 MEANS A DISPUTE, CONTROVERSY, OR ISSUE ARISING OUT OF OR RESULT-  
11 ING FROM INJURY TO, OR THE DEATH OF, AN INDIVIDUAL WHICH WAS  
12 CAUSED BY AN ERROR, OMISSION, OR NEGLIGENCE IN THE PERFORMANCE OF  
13 SERVICES BY A PROVIDER OR THEIR AGENT OR BASED ON A CLAIMED PER-  
14 FORMANCE OF SUCH SERVICES WITHOUT CONSENT, IN BREACH OF WARRANTY,  
15 OR IN VIOLATION OF CONTRACT.

16 (7) A HEALTH CARE CORPORATION MAY OFFER ECONOMIC INCENTIVES  
17 IN CONSIDERATION OF A SUBSCRIBER'S AGREEMENT NOT TO EXERCISE THE  
18 RIGHT TO REVOKE THE AGREEMENT TO ARBITRATE CONTAINED IN THE CER-  
19 TIFICATE, AS PROVIDED IN SUBSECTION (6).

20 (8) THE RIGHT OF A SUBSCRIBER TO REVOKE AN AGREEMENT TO  
21 ARBITRATE CONTAINED IN A CERTIFICATE SHALL BE EXERCISED PURSUANT  
22 TO EITHER THIS SUBSECTION OR SUBSECTION (9). UPON REQUEST OF A  
23 SUBSCRIBER, THE HEALTH CARE CORPORATION SHALL PROVIDE A FORM FOR  
24 THE SUBSCRIBER TO SIGN INDICATING THE SUBSCRIBER'S REVOCATION OF  
25 THE AGREEMENT TO ARBITRATE. THE FORM SHALL BE PRESCRIBED BY THE  
26 COMMISSIONER, AND SHALL CONTAIN AN ORIGINAL AND 1 COPY. THE  
27 SUBSCRIBER SHALL SIGN THE FORM AND SEND THE ORIGINAL BY

1 REGISTERED MAIL TO THE HEALTH CARE CORPORATION, AND SHALL RETAIN  
2 THE COPY.

3 (9) AS AN ALTERNATIVE TO THE REVOCATION PROCEDURE SET FORTH  
4 IN SUBSECTION (8), A SUBSCRIBER MAY REVOKE THE AGREEMENT TO ARBI-  
5 TRATE BY NOTIFYING THE HEALTH CARE CORPORATION IN WRITING BY REG-  
6 ISTERED MAIL OF THE SUBSCRIBER'S INTENTION TO REVOKE THE ARBITRA-  
7 TION AGREEMENT. THE NOTICE SHALL INCLUDE, AT A MINIMUM, THE  
8 SUBSCRIBER'S NAME, ADDRESS, AND CERTIFICATE OR CONTRACT NUMBER  
9 AND A STATEMENT OF THE SUBSCRIBER'S INTENT TO REVOKE THE ARBITRA-  
10 TION AGREEMENT.

11 (10) IF A SUBSCRIBER IS COVERED AS A DEPENDENT UNDER ANOTHER  
12 CERTIFICATE OR ANOTHER TYPE OF HEALTH CARE COVERAGE OR BENEFIT  
13 PLAN, AND THE SUBSCRIBER REVOKES THE AGREEMENT TO ARBITRATE CON-  
14 TAINED IN THE CERTIFICATE, THE SUBSCRIBER SHALL NOT BE BOUND BY  
15 AN ARBITRATION AGREEMENT CONTAINED IN ANY OTHER CERTIFICATE OR  
16 HEALTH CARE COVERAGE OR BENEFIT PLAN UNDER WHICH THE SUBSCRIBER  
17 IS COVERED AS A DEPENDENT.

18 (11) THE COMMISSIONER SHALL SUBMIT A WRITTEN REPORT TO THE  
19 LEGISLATURE ON THE EFFECT OF INCLUDING ARBITRATION AGREEMENTS IN  
20 CERTIFICATES, AS AUTHORIZED UNDER SUBSECTION (6). THE REPORT  
21 SHALL INCLUDE, BUT NOT BE LIMITED TO, COST SAVINGS REALIZED BY  
22 THE HEALTH CARE CORPORATION AS A RESULT OF INCLUDING ARBITRATION  
23 AGREEMENTS IN CERTIFICATES. THE REPORT SHALL BE SUBMITTED NOT  
24 LATER THAN THE EXPIRATION OF 3 YEARS AFTER THE EFFECTIVE DATE OF  
25 THIS SUBSECTION.

26 (12) ~~-(6)-~~ A health care corporation shall have the right to  
27 status as a party in interest, whether by intervention or



1 otherwise, in any judicial, quasi-judicial, or administrative  
2 agency proceeding in this state for the purpose of enforcing any  
3 rights it may have for reimbursement of payments made or advanced  
4 for health care services on behalf of 1 or more of its subscrib-  
5 ers or members.

6 (13) ~~(7)~~ A health care corporation shall not directly  
7 reimburse a provider in this state who has not entered into a  
8 participating contract with the corporation.

9 (14) ~~(8)~~ A health care corporation shall not limit or deny  
10 coverage to a subscriber or limit or deny reimbursement to a pro-  
11 vider on the ground that services were rendered while the sub-  
12 scriber was in a health care facility operated by this state or a  
13 political subdivision of this state. A health care corporation  
14 shall not limit or deny participation status to a health care  
15 facility on the ground that the health care facility is operated  
16 by this state or a political subdivision of this state, if the  
17 facility meets the standards set by the corporation for all other  
18 facilities of that type, government-operated or otherwise. To  
19 qualify for participation and reimbursement, a facility shall, at  
20 a minimum, meet all of the following requirements, which shall  
21 apply to all similar facilities:

22 (a) Be accredited by the joint commission on accreditation  
23 of hospitals.

24 (b) Meet the certification standards of the medicare program  
25 and the medicaid program.

26 (c) Meet all statutory requirements for certificate of  
27 need.

1       (d) Follow generally accepted accounting principles and  
2 practices.

3       (e) Have a community advisory board.

4       (f) Have a program of utilization and peer review to assure  
5 that patient care is appropriate and at an acute level.

6       (g) Designate that portion of the facility which is to be  
7 used for acute care.