

# SENATE BILL No. 603

July 11, 2001, Introduced by Senators SMITH, BYRUM, PETERS, MURPHY, DINGELL, YOUNG, SCOTT, DE BEAUSSAERT, CHERRY, KOIVISTO and HART and referred to the Committee on Health Policy.

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
(MCL 500.100 to 500.8302) by adding sections 3575 and 3577.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3575. (1) A HEALTH MAINTENANCE ORGANIZATION SHALL  
2 EXERCISE ORDINARY CARE WHEN MAKING A HEALTH CARE TREATMENT DECI-  
3 SION AND IS LIABLE FOR DAMAGES FOR HARM TO AN ENROLLEE PROXI-  
4 MATELY CAUSED BY ITS FAILURE TO EXERCISE ORDINARY CARE.

5 (2) A HEALTH MAINTENANCE ORGANIZATION IS LIABLE FOR DAMAGES  
6 FOR HARM TO AN ENROLLEE PROXIMATELY CAUSED BY A HEALTH CARE  
7 TREATMENT DECISION MADE BY A HEALTH MAINTENANCE ORGANIZATION  
8 EMPLOYEE, AGENT, OSTENSIBLE AGENT, OR REPRESENTATIVE ACTING ON  
9 BEHALF OF THE HEALTH MAINTENANCE ORGANIZATION AND OVER WHOM THE  
10 HEALTH MAINTENANCE ORGANIZATION HAS THE RIGHT TO EXERCISE  
11 INFLUENCE OR CONTROL OR HAS EXERCISED INFLUENCE OR CONTROL THAT

1 RESULTED IN THE FAILURE TO EXERCISE ORDINARY CARE. HOWEVER, A  
2 FINDING THAT A HEALTH PROFESSIONAL IS AN EMPLOYEE, AGENT, OSTEN-  
3 SIBLE AGENT, OR REPRESENTATIVE OF A HEALTH MAINTENANCE ORGANIZA-  
4 TION SHALL NOT BE BASED SOLELY ON PROOF THAT THE INDIVIDUAL'S  
5 NAME APPEARS IN A LISTING OF APPROVED PROVIDERS MADE AVAILABLE TO  
6 THE HEALTH MAINTENANCE ORGANIZATION'S ENROLLEES.

7 (3) BOTH OF THE FOLLOWING ARE DEFENSES IN AN ACTION BROUGHT  
8 PURSUANT TO SUBSECTION (1) OR (2):

9 (A) NEITHER THE HEALTH MAINTENANCE ORGANIZATION NOR ITS  
10 EMPLOYEE, AGENT, OSTENSIBLE AGENT, OR REPRESENTATIVE CONTROLLED,  
11 INFLUENCED, OR PARTICIPATED IN THE HEALTH CARE TREATMENT  
12 DECISION.

13 (B) THE HEALTH MAINTENANCE ORGANIZATION DID NOT DENY OR  
14 DELAY PAYMENT FOR ANY TREATMENT PRESCRIBED OR RECOMMENDED BY A  
15 PROVIDER TO THE ENROLLEE.

16 (4) THIS SECTION DOES NOT CREATE AN OBLIGATION FOR A HEALTH  
17 MAINTENANCE ORGANIZATION TO PROVIDE TO AN ENROLLEE TREATMENT THAT  
18 IS NOT COVERED BY THE HEALTH MAINTENANCE ORGANIZATION CONTRACT  
19 WITH THE ENROLLEE.

20 (5) THIS SECTION DOES NOT CREATE ANY LIABILITY ON THE PART  
21 OF AN EMPLOYER OR EMPLOYER PURCHASING GROUP THAT PURCHASES COVER-  
22 AGE OR ASSUMES RISK ON BEHALF OF ITS EMPLOYEES.

23 (6) FOR PURPOSES OF THE REVISED JUDICATURE ACT OF 1961, 1961  
24 PA 236, MCL 600.101 TO 600.9948, THIS SECTION DOES NOT CREATE A  
25 MEDICAL MALPRACTICE CAUSE OF ACTION.

26 (7) AS USED IN THIS SECTION:

1 (A) "HEALTH CARE TREATMENT DECISION" MEANS EITHER A  
2 DETERMINATION AS TO WHEN THE HEALTH MAINTENANCE ORGANIZATION  
3 ACTUALLY PROVIDES MEDICAL SERVICES OR A DECISION THAT AFFECTS THE  
4 QUALITY OF THE DIAGNOSIS, CARE, OR TREATMENT PROVIDED TO THE  
5 HEALTH MAINTENANCE ORGANIZATION'S ENROLLEES.

6 (B) "ORDINARY CARE" MEANS FOR A HEALTH MAINTENANCE ORGANIZA-  
7 TION THAT DEGREE OF CARE THAT A HEALTH MAINTENANCE ORGANIZATION  
8 OF ORDINARY PRUDENCE WOULD USE UNDER THE SAME OR SIMILAR  
9 CIRCUMSTANCES. FOR AN EMPLOYEE, AGENT, OSTENSIBLE AGENT, OR REP-  
10 RESENTATIVE ACTING ON BEHALF OF THE HEALTH MAINTENANCE ORGANIZA-  
11 TION, ORDINARY CARE MEANS THAT DEGREE OF CARE THAT A PERSON OF  
12 ORDINARY PRUDENCE IN THE SAME PROFESSION, SPECIALTY, OR AREA OF  
13 PRACTICE AS THAT PERSON WOULD USE UNDER THE SAME OR SIMILAR  
14 CIRCUMSTANCES.

15 SEC. 3577. A HEALTH MAINTENANCE ORGANIZATION SHALL NOT  
16 ENTER INTO A CONTRACT WITH A HEALTH PROFESSIONAL OR HEALTH FACIL-  
17 ITY THAT INCLUDES AN INDEMNIFICATION OR HOLD HARMLESS CLAUSE FOR  
18 THE ACTS OR CONDUCT OF THE HEALTH MAINTENANCE ORGANIZATION.

19 Enacting section 1. Section 3575 of the insurance code of  
20 1956, 1956 PA 218, MCL 500.3575, as added by this amendatory act,  
21 applies only to causes of action that are filed on or after the  
22 effective date of this amendatory act.