Act No. 74
Public Acts of 1991
Approved by the Governor
July 11, 1991
Filed with the Secretary of State
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STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1991

Introduced by Senators O'Brien, Posthumus, Miller, Schwarz, Wartner, Arthurhultz, Gast, Honigman, Emmons, Cisky, N. Smith, Dillingham, McManus, Koivisto, Berryman, Cherry, Vaughn, Barcia, Welborn, Conroy, Stabenow, V. Smith, Pollack, Dingell, Holmes, Hart, DiNello, Carl and Geake

ENROLLED SENATE BILL No. 239

AN ACT to amend section 205 of Act No. 350 of the Public Acts of 1980, entitled "An act to provide for the incorporation of nonprofit health care corporations; to provide their rights, powers, and immunities; to prescribe the powers and duties of certain state officers relative to the exercise of those rights, powers, and immunities; to prescribe certain conditions for the transaction of business by those corporations in this state; to define the relationship of health care providers to nonprofit health care corporations and to specify their rights, powers, and immunities with respect thereto; to provide for the regulation and supervision of nonprofit health care corporations by the commissioner of insurance; to prescribe powers and duties of certain other state officers with respect to the regulation and supervision of nonprofit health care corporations; to regulate the merger or consolidation of certain corporations; to prescribe an expeditious and effective procedure for the maintenance and conduct of certain administrative appeals relative to provider class plans; to provide for certain administrative hearings relative to rates for health care benefits; to provide for certain causes of action; to prescribe penalties and to provide civil fines for violations of this act; and to repeal certain acts and parts of acts," being section 550.1205 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 205 of Act No. 350 of the Public Acts of 1980, being section 550.1205 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 205. (1) A health care corporation shall record or estimate liabilities at reasonable values, neither excessive nor inadequate, and in accordance with sound actuarial practices and generally accepted accounting principles, to provide for the payment of all debts of the corporation. The assets of the corporation shall be valued in accordance with sound actuarial practices and generally accepted accounting principles. The commissioner shall disapprove the amount of any assets or liabilities that violate this subsection. The commissioner shall have the authority to disapprove the creation of any new liability that is properly includable in the contingency reserves. A liability shall be considered to be a new liability if the liability was not in existence on or before December 31, 1978.

(2) At all times while engaged in business, a health care corporation shall maintain a contingency reserve that, on a projected basis, progresses toward the target contingency reserve level established pursuant to this section. Until a target contingency reserve level is established pursuant to this section, the corporation shall maintain a contingency reserve in the form and amount determined by the commissioner, or 11.5% of the previous year's total incurred claims and incurred expenses, whichever is greater.

(3) Within 30 days after the filing of a health care corporation's annual financial statement under section 602, the commissioner shall determine the target contingency reserve level for the corporation, expressed as a percentage of the total incurred claims and incurred expenses of the corporation for the previous calendar year. The target shall be equal to the adjustment factor established in subsection (7) multiplied by the sum of the risk factors weighted by the distribution of business of the corporation as of the previous December 31. The commissioner shall transmit a copy of the target to the corporation, rounded up to the nearest 1/10 of a percent.

(4) A health care corporation, for purposes of this section, shall define at least 5 lines of business and shall assign a risk factor to each line of business. The risk factors shall be established in accordance with sound actuarial practices, and the health care corporation shall file these risk factors with the commissioner within 6 months after the following times:

(a) In the case of a health care corporation established under former Act No. 108 or 109 of the Public Acts of 1939, upon the effective date of this act.

(b) In the case of a health care corporation newly incorporated under this act, upon formation of the corporation.

(c) In the case of a health care corporation that has previously determined risk factors pursuant to this section, upon request of either the corporation or the commissioner, provided that the request is not made within 3 years after a previous determination of risk factors pursuant to this section, except as provided in subsection (8).

(5) Within 30 days after receipt of the risk factors filed pursuant to subsection (4), the commissioner shall do 1 of the following:

(a) Approve the factors and proceed under subsection (7).

(b) Define 1 or more additional lines of business, transmit the definitions to the health care corporation, and request that the corporation establish risk factors for those additional lines. The corporation shall then have 60 days to submit a risk factor for each line of business defined by either the commissioner or the corporation, which shall be approved or disapproved by the commissioner under this subsection. A health care corporation may revise a previously filed risk factor under this subsection.

(c) Disapprove the factors, and proceed under subsection (6).

(6) If the risk factors are disapproved by the commissioner pursuant to subsection (5)(c), the commissioner shall immediately notify the health care corporation of the disapproval. Within 6 months following notification, a panel of 3 actuaries, 1 appointed by the commissioner, 1 by the corporation, and 1 appointed by the 2 previously appointed actuaries, shall determine a risk factor for each line of business. The agreement of any 2 actuaries on the panel shall be sufficient for the determination of the risk factors, and the panel shall transmit a copy of the risk factors to both the commissioner and the corporation.

(7) Within 15 days after the determination of the risk factors under subsection (6), or the approval of the risk factors under subsection (5)(a), the commissioner shall calculate an adjustment factor, which shall be transmitted to the health care corporation and the legislature. The adjustment factor shall equal:

(a) In the case of a filing pursuant to subsection (4)(a), 11.5% divided by the sum of the risk factors weighted by the distribution of business of the corporation as of December 31, 1979.

(b) In the case of a filing pursuant to subsection (4)(b), 11.5% divided by the sum of the risk factors weighted by the distribution of business of the corporation as of 6 months following the formation of the corporation.

(c) In the case of a filing pursuant to subsection (4)(c), the current target contingency reserve level divided by the sum of the risk factors weighted by the distribution of business of the corporation as of the previous December 31.

(8) At any time the health care corporation and the commissioner, by mutual agreement, may enter into a stipulation setting forth lines of business, risk factors for each line of business, and an adjustment factor.

(9) The contingency reserve of a health care corporation shall not be less than 65%, or more than 120% of the target contingency reserve level. If the contingency reserve is above the required range at the end of a calendar year, the corporation shall implement adjustments as necessary to achieve the required range and shall file with the commissioner, for information, a description of the adjustments.

(10) The commissioner shall examine a health care corporation's annual financial statement filed in accordance with section 602 to determine, in accordance with generally accepted accounting principles, whether the contingency reserve is outside the required range described in subsection (9). If the contingency reserve is outside the required range at the end of 2 successive calendar years, the corporation shall file a plan, for approval by the commissioner, to adjust the contingency reserve to a level within the required range. If the commissioner disapproves the corporation's plan, the commissioner shall formulate a plan and shall forward the plan to the corporation. The corporation shall begin implementation of the commissioner's plan immediately upon receipt of the plan in writing.

(11) Contributions to the contingency reserve shall consist of 2 contribution components. The first is the contribution for risk which shall be actuarially determined as a normal part of the rate-making process. The second is the contribution for plan-wide viability. Both components shall be considered contributions to the contingency reserve and shall be taken into consideration in determining compliance with this section.

(12) With respect to contributions for plan-wide viability, those contributions shall be made in accordance with the following:

(a) For contributions by small group and nongroup subscribers, if the contingency reserve is below 65% of the target, the contribution rate shall be 1% of the rate established pursuant to part 6; if the contingency reserve is between 65% and 95% of the target, the contribution rate shall be 0.5% of the rate established pursuant to part 6; if the contingency reserve is greater than 95% of the target, the contribution rate shall be 0%.

(b) For contributions by medium group and large group subscribers, if the contingency reserve is below 65% of the target, the contribution rate shall be 1% of the rate established pursuant to part 6; if the contingency reserve is between 65% and 105% of the target, the contribution shall be 0.5% of the rate established pursuant to part 6; if the contingency reserve is greater than 105% of the target, the contribution rate shall be 0%.

(c) At any time the corporation and the commissioner, by mutual agreement, may enter into a stipulation setting forth uniform adjustments to the contributions established in subdivisions (a) and (b).

(13) As used in this section:

(a) "Actuary" means a person who has the professional designation of a fellow of the society of actuaries, or a fellow of the society of casualty actuaries.

(b) "Distribution of business" means the percentage of a health care corporation's total business attributable to a given line of business, based on dollar amount of incurred claims and incurred expenses.

(c) "Risk factor" means the relative probability of loss associated with a given line of business, expressed as a percentage of incurred claims and incurred expenses for a calendar year.

(14) Arrangements for health benefit programs authorized under section 207(1)(f) shall not be included under this section unless, as part of the arrangement, contributions are made to the contingency reserve.

(15) The costs of a panel established under subsection (6) shall be split equally between a health care corporation and the commissioner, except that both the corporation and the commissioner shall pay the full costs associated with their appointed actuary.

(16) Provisions in this section concerning contributions to the contingency reserve do not apply to the Michigan Caring Program created in section 436.

Section 2. This amendatory act shall not take effect unless all of the following bills of the 86th Legislature are enacted into law:

(a) Senate Bill No. 238.

(b) House Bill No. 4659.

(c) House Bill No. 4660.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved .....

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Governor.