

# HOUSE BILL No. 5220

October 3, 1991, Introduced by Reps. Hertel, Bennane, Gire, Scott, Hunter Yokich, Palamara, Gubow, Barns and Rocca and referred to the Committee on Public Health.

A bill to amend sections 406 and 604 of Act No. 350 of the Public Acts of 1980, entitled as amended

"The nonprofit health care corporation reform act,"

being sections 550.1406 and 550.1604 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 406 and 604 of Act No. 350 of the  
2 Public Acts of 1980, being sections 550.1406 and 550.1604 of the  
3 Michigan Compiled Laws, are amended to read as follows:

4 Sec. 406. (1) A health care corporation shall, in order to  
5 ensure the confidentiality of records containing personal data  
6 that may be associated with identifiable members, use reasonable  
7 care to secure these records from unauthorized access and to  
8 collect only personal data that ~~are~~ IS necessary for the proper  
9 review and payment of claims. Except as is necessary to comply

1 with section 603 or for the purpose of claims adjudication,  
2 claims verification, or when required by law, a health care cor-  
3 poration shall ~~not~~ disclose records containing personal data  
4 that may be associated with an identifiable member IN COMPLIANCE  
5 WITH THE HEALTH CARE INFORMATION ACT, ~~or~~ AND SHALL DISCLOSE  
6 personal information concerning a member, to a person other than  
7 the member, ~~without~~ ONLY WITH the prior and specific WRITTEN  
8 informed consent of the member to whom the ~~data or~~ PERSONAL  
9 information pertains. ~~The member's consent shall be in~~  
10 ~~writing. Except when a disclosure is made to the commissioner or~~  
11 ~~another governmental agency, a court, or any other governmental~~  
12 ~~entity, a health care corporation shall make a disclosure for~~  
13 ~~which prior and specific informed consent is not required upon~~  
14 ~~the condition that the person to whom the disclosure is made pro-~~  
15 ~~tect and use the disclosed data or information only in the manner~~  
16 ~~authorized by the corporation, pursuant to subsection (2). If a~~  
17 ~~member has authorized the release of personal data to a specific~~  
18 ~~person, a health care corporation shall make a disclosure to that~~  
19 ~~person upon the condition that the person shall not release the~~  
20 ~~data to a third person unless the member executes in writing~~  
21 ~~another prior and specific informed consent authorizing the addi-~~  
22 ~~tional release.~~ This subsection ~~shall~~ DOES not preclude the  
23 release of information to a member, pertaining to that member, by  
24 telephone, if the identity of the member is verified. This sub-  
25 section ~~shall~~ DOES not preclude a representative of a sub-  
26 scriber group, upon request of a member of that subscriber group,

1 or an elected official, upon request of a constituent, from  
2 assisting the individual in resolving a claim.

3 (2) ~~The~~ SUBJECT TO THE HEALTH CARE INFORMATION ACT, THE  
4 board of directors of a health care corporation shall establish  
5 and make public the policy of the corporation regarding the pro-  
6 tection of the privacy of members and the confidentiality of per-  
7 sonal data. The policy, at a minimum, shall do all of the  
8 following:

9 (a) Provide for the corporation's implementation of provi-  
10 sions in this act and other applicable laws respecting collec-  
11 tion, security, use, release of, and access to personal data.

12 (b) Identify the routine uses of personal data by the corpo-  
13 ration; prescribe the means by which members will be notified  
14 regarding such uses; and provide for notification regarding the  
15 actual release of personal data and information that may be iden-  
16 tified with, or that concern, a member, upon specific request by  
17 that member. As used in this subdivision, "routine use" means  
18 the ordinary use or release of personal data compatible with the  
19 purpose for which the data ~~were~~ WAS collected.

20 (c) Assure that no person ~~shall have~~ HAS access to per-  
21 sonal data except ~~on the basis of a need to know~~ AS PROVIDED IN  
22 THE HEALTH CARE INFORMATION ACT.

23 (d) Establish the contractual or other conditions under  
24 which the corporation will release personal data.

25 (e) Provide that enrollment applications and claim forms  
26 developed by the corporation shall contain a member's consent to  
27 the release of PERSONAL data and PERSONAL information that is

1 limited to the PERSONAL data and PERSONAL information necessary  
2 for the proper review and payment of claims, and shall reasonably  
3 notify members of their rights pursuant to the board's policy and  
4 applicable law.

5 (f) Provide that applicants for new or renewed certificates  
6 shall be advised that the corporation does not require the use of  
7 the applicant's federal social security account number and that,  
8 when applicable, another authority does require use of the  
9 number.

10 (3) A health care corporation ~~which~~ THAT violates this  
11 section is guilty of a misdemeanor, punishable by a fine of not  
12 more than \$1,000.00 for each violation.

13 (4) A member may bring a civil action for damages against a  
14 health care corporation for a violation of this section and may  
15 recover actual damages or \$200.00, whichever is greater, together  
16 with reasonable attorneys' fees and costs.

17 (5) This section ~~shall not be construed to~~ DOES NOT limit  
18 access to records or ~~to~~ enlarge or diminish the investigative  
19 and examination powers of governmental agencies, as provided for  
20 by law.

21 Sec. 604. (1) The commissioner shall ensure ~~that~~ THE  
22 confidentiality of records containing personal data ~~which~~ THAT  
23 may be associated with identifiable individuals. Except as is  
24 necessary to comply with a court order, or for the purposes of  
25 claim adjudication or when required by law, the commissioner  
26 shall not disclose records containing personal data ~~which~~ THAT  
27 may be associated with an identifiable individual ~~without the~~

1 ~~prior informed consent of the individual to whom the data~~  
2 ~~pertain~~ IN COMPLIANCE WITH THE HEALTH CARE INFORMATION ACT.  
3 ~~The individual's consent shall be in writing. If an individual~~  
4 ~~has authorized the release of personal data to a specific person,~~  
5 ~~that person shall not release the data to a third person unless~~  
6 ~~the individual executes in writing another informed consent~~  
7 ~~authorizing that additional release.~~

8 (2) The commissioner shall ensure the confidentiality of  
9 data ~~which~~ THAT discloses reimbursement levels for specific  
10 procedures or services of specific providers and data ~~which~~  
11 THAT, if disclosed, can be used to calculate those reimbursement  
12 levels. This subsection ~~shall apply~~ APPLIES only if the data  
13 ~~are~~ IS not already generally known to providers and if the dis-  
14 closure of the data would be harmful to the achievement of the  
15 goals set forth in section 504. Only that portion of a record  
16 dealing with data described in this subsection ~~shall be~~ IS  
17 exempt from disclosure. A person ~~—~~ whose request for a hearing  
18 has been granted by the commissioner ~~—~~ may examine the data and  
19 ~~shall be~~ IS subject to the same confidentiality requirements as  
20 the commissioner under this subsection.

21 (3) The commissioner shall ensure the confidentiality of any  
22 trade secrets of the corporation, except for information required  
23 to be disclosed under THE FREEDOM OF INFORMATION ACT, Act No.  
24 442 of the Public Acts of 1976, as amended, being sections 15.231  
25 to 15.246 of the Michigan Compiled Laws.

26 (4) Subject to the provisions of subsections (1) to (3),  
27 information ~~which~~ THAT a health care corporation provides to or

1 files with the commissioner ~~shall be~~ IS governed by Act No.  
2 442 of the Public Acts of 1976, as amended, being sections 15.231  
3 to 15.246 of the Michigan Compiled Laws.

4 (5) A person who violates the confidentiality provisions of  
5 this section is guilty of a misdemeanor, punishable by a fine of  
6 not more than \$1,000.00 for each violation.

7 Section 2. This amendatory act shall not take effect unless  
8 Senate Bill No. \_\_\_\_\_ or House Bill No. 5217 (request  
9 no. 00759'91) of the 86th Legislature is enacted into law.