

# HOUSE BILL No. 6159

September 30, 1992, Introduced by Reps. Owen, Perry Bullard, Profit and Wallace and Referred to the Committee on Insurance.

A bill to amend sections 2 and 3 of Act No. 233 of the Public Acts of 1984, entitled "Prudent purchaser act," being sections 550.52 and 550.53 of the Michigan Compiled Laws; and to add sections 10a and 10b.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2 and 3 of Act No. 233 of the Public  
2 Acts of 1984, being sections 550.52 and 550.53 of the Michigan  
3 Compiled Laws, are amended and sections 10a and 10b are added to  
4 read as follows:

5 Sec. 2. As used in this act:

6 (A) "ADMINISTRATIVE PROCEDURES ACT OF 1969" MEANS ACT  
7 NO. 306 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO  
8 24.328 OF THE MICHIGAN COMPILED LAWS.

1 (B) ~~-(a)-~~ "Commissioner" means the commissioner of  
2 insurance.

3 (C) ~~-(b)-~~ "Dental care corporation" means a dental care cor-  
4 poration incorporated under Act No. 125 of the Public Acts of  
5 1963, being sections 550.351 to 550.373 of the Michigan Compiled  
6 Laws.

7 (D) ~~-(c)-~~ "Health care corporation" means a health care cor-  
8 poration incorporated under the nonprofit health care corporation  
9 reform act, Act No. 350 of the Public Acts of 1980, being sec-  
10 tions 550.1101 to 550.1704 of the Michigan Compiled Laws.

11 (E) ~~-(d)-~~ "Health care provider" means a health facility or  
12 a person licensed, certified, or registered under parts 61 to 65  
13 or 161 to 182 of the public health code, Act No. 368 of the  
14 Public Acts of 1978, being sections 333.6101 to 333.6523 and  
15 333.16101 to 333.18237 of the Michigan Compiled Laws. ~~However,~~  
16 ~~health care provider does not include a pharmacist or pharmacy~~  
17 ~~engaged in the retail sale of drugs, until January 1, 1987.~~

18 (F) ~~-(e)-~~ "Health facility" means:

19 (i) A facility or agency licensed or authorized under  
20 ~~parts~~ PART 201 OR PARTS 205 to 217 of the public health code,  
21 ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 333.20101  
22 TO 333.20211 AND 333.20501 TO 333.21799E OF THE MICHIGAN COMPILED  
23 LAWS, or a licensed part thereof. ~~, except a facility or agency~~  
24 ~~licensed under part 203 of the public health code.~~

25 (ii) A mental hospital, psychiatric hospital, psychiatric  
26 unit, or mental retardation facility operated by the department  
27 of mental health or certified or licensed under THE MENTAL HEALTH

1 CODE, Act No. 258 of the Public Acts of 1974, being sections  
2 330.1001 to 330.2106 of the Michigan Compiled Laws.

3 (iii) A facility providing outpatient physical therapy serv-  
4 ices, including speech pathology services.

5 (iv) A kidney disease treatment center, including a free-  
6 standing hemodialysis unit.

7 (v) An organized ambulatory health care facility.

8 (vi) A tertiary health care service facility.

9 (vii) A substance abuse treatment program licensed under  
10 parts 61 to 65 of the public health code, Act No. 368 of the  
11 Public Acts of 1978, being sections 333.6101 to 333.6523 of the  
12 Michigan Compiled Laws.

13 (viii) An outpatient psychiatric clinic.

14 (ix) A home health agency.

15 (G) ~~(f)~~ "Health maintenance organization" means a health  
16 maintenance organization licensed under article 17 of the public  
17 health code, Act No. 368 of the Public Acts of 1978, being sec-  
18 tions 333.20101 to ~~333.22181~~ 333.22260 of the Michigan Compiled  
19 Laws.

20 (H) ~~(g)~~ "Hospital service corporation" means a hospital  
21 service corporation incorporated under ~~Act No. 109 of the Public~~  
22 ~~Acts of 1939, being sections 550.501 to 550.517 of the Michigan~~  
23 ~~Compiled Laws~~ THE NONPROFIT HEALTH CARE CORPORATION REFORM ACT,  
24 ACT NO. 350 OF THE PUBLIC ACTS OF 1980, BEING SECTIONS 550.1101  
25 TO 550.1704 OF THE MICHIGAN COMPILED LAWS.

1 (I) ~~(h)~~ "Insurer" means an insurer as defined in section  
2 106 of the insurance code of 1956, Act No. 218 of the Public Acts  
3 of 1956, being section 500.106 of the Michigan Compiled Laws.

4 (J) ~~(i)~~ "Medical care corporation" means a medical care  
5 corporation incorporated under ~~Act No. 108 of the Public Acts of~~  
6 ~~1939, being sections 550.301 to 550.316 of the Michigan Compiled~~  
7 ~~Laws~~ THE NONPROFIT HEALTH CARE CORPORATION REFORM ACT, ACT  
8 NO. 350 OF THE PUBLIC ACTS OF 1980, BEING SECTIONS 550.1101 TO  
9 550.1704 OF THE MICHIGAN COMPILED LAWS.

10 (K) ~~(j)~~ "Organization" means an insurer, a dental care  
11 corporation, hospital service corporation, medical care corpora-  
12 tion, health care corporation, or third party administrator.

13 (L) "PLAN MEMBER" MEANS AN INDIVIDUAL WHO RECEIVES OR IS  
14 ELIGIBLE FOR HEALTH CARE SERVICES UNDER A PRUDENT PURCHASER  
15 AGREEMENT.

16 (M) ~~(k)~~ "Provider panel" means a panel of health care pro-  
17 viders providing health care services pursuant to a prudent pur-  
18 chaser agreement.

19 (N) ~~(l)~~ "Prudent purchaser agreement" means an agreement  
20 between an organization and a health care provider pursuant to  
21 section 3.

22 (O) ~~(m)~~ "Third party administrator" means an administrator  
23 operating under a certificate of authority issued by the commis-  
24 sioner pursuant to the third party administrator act, ACT NO. 218  
25 OF THE PUBLIC ACTS OF 1984, BEING SECTIONS 550.901 TO 550.962 OF  
26 THE MICHIGAN COMPILED LAWS.

1       Sec. 3. (1) ~~An~~ EXCEPT AS PROVIDED IN SUBSECTION (2), AN  
2 organization may enter into prudent purchaser agreements with 1  
3 or more health care providers of a specific service to control  
4 health care costs, assure appropriate utilization of health care  
5 services, and maintain quality of health care. The organization  
6 may limit the number of prudent purchaser agreements entered into  
7 pursuant to this section ~~—~~ if the number of ~~such~~ agreements  
8 is sufficient to assure reasonable levels of access to health  
9 care services for recipients of those services. The number of  
10 prudent purchaser agreements authorized by this section ~~which~~  
11 THAT are necessary to assure reasonable levels of access to  
12 health care services for recipients shall be determined by the  
13 organization. However, the organization shall offer a prudent  
14 purchaser agreement, comparable to those agreements with other  
15 members of the provider panel, to a health care provider located  
16 within a reasonable distance from the recipients of ~~such~~ THOSE  
17 health care services ~~—~~ if a health care provider is located  
18 within that reasonable distance.

19       (2) AN ORGANIZATION THAT CONTROLS 15% OR MORE OF THE HEALTH  
20 CARE COVERAGE MARKET OR 15% OR MORE OF ANY SPECIFIC MEDICAL SERV-  
21 ICE IN THIS STATE SHALL NOT ESTABLISH OR OPERATE, DIRECTLY OR  
22 INDIRECTLY, A PRUDENT PURCHASER AGREEMENT.

23       (3) A PRUDENT PURCHASER AGREEMENT SHALL NOT BE USED TO  
24 CREATE A MONOPOLY. AS USED IN THIS SUBSECTION, "MONOPOLY" MEANS  
25 CONTROL OF 15% OR MORE OF THE STATE'S OVERALL HEALTH CARE COVER-  
26 AGE MARKET OR CONTROL OF 15% OR MORE OF ANY SPECIFIC MEDICAL  
27 SERVICE IN THE STATE.

1       (4) ~~(2)~~ An organization shall give interested health care  
2 providers located in the geographic area served by the organi-  
3 zation an opportunity to apply to the organization for membership  
4 on the provider panel.

5       (5) ~~(3) Prudent~~ A PRUDENT PURCHASER AGREEMENT SHALL NOT  
6 REDUCE EXISTING COMMUNITY HEALTH CARE STANDARDS, INCLUDING, BUT  
7 NOT LIMITED TO, QUALITY, COSTS, AND APPROPRIATE UTILIZATION OF,  
8 AND ACCESS TO, HEALTH CARE. A PRUDENT purchaser ~~agreements~~  
9 AGREEMENT shall be based upon the following written standards  
10 which shall be filed by the organization with the commissioner on  
11 a form and in a manner that is uniformly developed and applied by  
12 the commissioner before the initial provider panel is formed:

13       (a) Standards for maintaining quality health care.

14       (b) Standards for controlling health care costs.

15       (c) Standards for assuring appropriate utilization of health  
16 care services.

17       (d) Standards for assuring reasonable levels of access to  
18 health care services.

19       (e) Other standards ~~deemed~~ CONSIDERED appropriate by the  
20 organization.

21       (6) A PRUDENT PURCHASER AGREEMENT SHALL BE FILED WITH THE  
22 COMMISSIONER ON A FORM PRESCRIBED BY HIM OR HER AND SHALL NOT BE  
23 IMPLEMENTED UNTIL IT RECEIVES THE COMMISSIONER'S APPROVAL. IF  
24 THE COMMISSIONER DOES NOT APPROVE A PRUDENT PURCHASER AGREEMENT,  
25 AN AFFECTED ORGANIZATION OR HEALTH CARE PROVIDER IS ENTITLED TO A  
26 HEARING ON THE MATTER CONDUCTED BEFORE THE COMMISSIONER PURSUANT  
27 TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969.

1       (7) ~~(4)~~ An organization shall develop and institute  
2 procedures ~~which~~ THAT are designed to notify health care pro-  
3 viders located in the geographic area served by the organization  
4 of the formation of a provider panel. Upon receipt of a request  
5 by a health care provider, the organization shall provide the  
6 written standards described in subsection ~~(3)~~ (5) to the health  
7 care provider. EACH HEALTH CARE PROVIDER THAT MEETS THE WRITTEN  
8 STANDARDS DESCRIBED IN SUBSECTION (5) AND THAT IS LOCATED WITHIN  
9 THE SERVICE AREA OR THAT CAN PROVIDE SERVICE IN THAT AREA SHALL  
10 BE ACCEPTED AS A MEMBER OF THE PROVIDER PANEL.

11       (8) ~~(5)~~ An organization ~~which~~ THAT enters into prudent  
12 purchaser agreements with health care providers under this act  
13 shall institute a program for the professional review of the  
14 quality of health care, performance of health care personnel, and  
15 utilization of services and facilities under a prudent purchaser  
16 agreement. At least every 2 years, the organization shall pro-  
17 vide for an evaluation of its professional review program by a  
18 professionally recognized independent third party.

19       (9) AN ENTITY THAT PERFORMS UTILIZATION AND REVIEW ACTIVI-  
20 TIES FOR A PRUDENT PURCHASER AGREEMENT SHALL FILE ITS UTILIZATION  
21 AND REVIEW PLAN WITH, AND RECEIVE APPROVAL OF IT BY, THE  
22 COMMISSIONER.

23       (10) ~~(6)~~ If 2 or more classes of health care providers may  
24 legally provide the same health care service, the organization  
25 shall offer each class of health care providers the opportunity  
26 to apply to the organization for membership on the provider  
27 panel.

1       (11) ~~(7)~~ Each prudent purchaser agreement shall state that  
2 the health care provider may be removed from the provider panel  
3 before the expiration of the agreement if the provider does not  
4 comply with the requirements of the contract.

5       (12) ~~(8) Nothing in this~~ THIS act ~~shall~~ DOES NOT pre-  
6 clude a health care provider or health care facility from being a  
7 member of more than 1 provider panel.

8       (13) A PRUDENT PURCHASER AGREEMENT SHALL NOT UNREASONABLY  
9 RESTRICT OR REDUCE ACCESS TO HEALTH CARE SERVICES. AS USED IN  
10 THIS ACT, "REASONABLE ACCESS TO HEALTH CARE SERVICES" MEANS THAT  
11 A PLAN MEMBER HAS ACCESS, WITHIN THE PLAN'S SERVICE AREA, TO  
12 HEALTH CARE FROM NOT LESS THAN 75% OF EACH TYPE OF MEDICAL PRO-  
13 VIDER THAT IS INCLUDED IN THE PLAN. IN DETERMINING WHETHER THIS  
14 STANDARD IS MET, MEDICAL DOCTORS AND DOCTORS OF OSTEOPATHY SHALL  
15 BE CATEGORIZED BY SPECIALTY. USING THE CRITERION SET FORTH IN  
16 THIS SUBSECTION, THE COMMISSIONER SHALL DETERMINE WHETHER A PRU-  
17 DENT PURCHASER AGREEMENT PROVIDES PLAN MEMBERS WITH A REASONABLE  
18 LEVEL OF ACCESS TO HEALTH CARE SERVICES.

19       (14) ~~(9) Provider panels~~ A PROVIDER PANEL may include  
20 health care providers and facilities outside Michigan when neces-  
21 sary to assure reasonable levels of access to health care serv-  
22 ices under coverage authorized by this act.

23       (15) A PRUDENT PURCHASER AGREEMENT SHALL NOT INVOLVE ANY  
24 FORM OF KICKBACKS OR PREFERENTIAL PAYMENTS TO PROVIDERS THAT ARE  
25 USED AS INCENTIVES TO SHIFT MARKET SHARES.



1        (16) ~~(10)~~ At the time coverage authorized by this act is<sup>3</sup>  
 2 offered to a person, the organization shall give or cause to be  
 3 given to the person the following information:

4        (a) The identity of the organization contracting with the  
 5 provider panel.

6        (b) The identity of the party sponsoring the coverage  
 7 including, but not limited to, the employer.

8        (c) The identity of the collective bargaining agent if the  
 9 coverage is offered pursuant to a collective bargaining  
 10 agreement.

11       (17) A HEALTH CARE PROVIDER SHALL FURNISH TO A PLAN MEMBER  
 12 OR BENEFICIARY OF A PLAN MEMBER A WRITTEN EXPLANATION, AS APPLI-  
 13 CABLE, OF ANY COPAYMENT, DEDUCTIBLE, BALANCE BILLING POTENTIAL,  
 14 AND LIMIT OR RESTRICTION ON PAYMENTS FOR COVERED HEALTH CARE  
 15 SERVICES OR LIMIT ON ACCESS TO HEALTH CARE SERVICES.

16       (18) ~~(11)~~ If a person who has coverage authorized by this  
 17 act is entitled to receive a health care service when rendered by  
 18 a health care provider who is a member of the provider panel, the  
 19 person ~~shall be~~ IS entitled to receive the health care service  
 20 from a health care provider who is not a member of the provider  
 21 panel for an emergency episode of illness or injury ~~which~~ THAT  
 22 requires immediate treatment before it can be obtained from a  
 23 health care provider who is on the provider panel.

24       (19) ~~(12) Subsections (2) to (11) shall~~ THIS SECTION DOES  
 25 not limit the authority of ~~organizations~~ AN ORGANIZATION to  
 26 limit the number of prudent purchaser agreements.

1        SEC. 10A.    EXCEPT AS PROVIDED IN SECTION 4, UPON RECEIPT OF  
2 A COMPLAINT OF A VIOLATION OF THIS ACT, IN A FORM SATISFACTORY TO  
3 THE COMMISSIONER, AND IF THE COMMISSIONER HAS PROBABLE CAUSE TO  
4 BELIEVE THAT A VIOLATION HAS OCCURRED, THE COMMISSIONER SHALL  
5 CONDUCT A HEARING PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT  
6 OF 1969.    IF AFTER THE HEARING THE COMMISSIONER DETERMINES THAT  
7 THE ORGANIZATION OR HEALTH CARE PROVIDER HAS VIOLATED THIS ACT,  
8 THE COMMISSIONER MAY DO 1 OR MORE OF THE FOLLOWING:

9        (A) ISSUE A CEASE AND DESIST ORDER REQUIRING THE ORGANI-  
10 ZATION OR HEALTH CARE PROVIDER, AS APPROPRIATE, FROM ENGAGING IN  
11 THE CONDUCT PROHIBITED BY THIS ACT.

12        (B) IMPOSE A CIVIL FINE OF NOT MORE THAN \$1,000.00 FOR EACH  
13 VIOLATION.

14        (C) IMPOSE A CIVIL FINE OF NOT MORE THAN \$5,000.00 FOR EACH  
15 WILLFUL, REPEATED, OR CONTINUING VIOLATION.

16        (D) WITHDRAW APPROVAL OF THE PRUDENT PURCHASER AGREEMENT AND  
17 REQUIRE ORGANIZATIONS AND HEALTH CARE PROVIDERS TO CEASE OPERAT-  
18 ING UNDER IT FOR A WILLFUL, REPEATED, OR CONTINUING VIOLATION.

19        SEC. 10B.    THE COMMISSIONER SHALL PROMULGATE, AS NECESSARY,  
20 RULES TO IMPLEMENT THIS ACT PURSUANT TO THE ADMINISTRATIVE PROCE-  
21 DURES ACT OF 1969.    THE RULES SHALL INCLUDE, BUT NOT BE LIMITED  
22 TO, UTILIZATION AND REVIEW ACTIVITIES AS THEY RELATE TO PRUDENT  
23 PURCHASER AGREEMENTS.