

SENATE BILL No. 39

February 5, 1991, Introduced by Senators N. SMITH and Posthumus and referred to the Committee on Commerce.

A bill to amend section 6 of Act No. 233 of the Public Acts of 1984, entitled
"Prudent purchaser act,"
as amended by Act No. 282 of the Public Acts of 1988, being section 550.56 of the Michigan Compiled Laws; to add section 3a; and to repeal certain parts of the act on specific dates.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 6 of Act No. 233 of the Public Acts of
2 1984, as amended by Act No. 282 of the Public Acts of 1988, being
3 section 550.56 of the Michigan Compiled Laws, is amended and sec-
4 tion 3a is added to read as follows:

5 SEC. 3A. (1) A PRUDENT PURCHASER AGREEMENT AND A CONTRACT
6 PROVIDING COVERAGE AUTHORIZED BY THIS ACT OR A RIDER OR ADDENDUM
7 TO SUCH AN AGREEMENT OR CONTRACT THAT CONTAINS A PROVISION FOR
8 ARBITRATION OF A DISPUTE AS TO THE MALPRACTICE OF A MEMBER OR

1 MEMBERS OF A PROVIDER PANEL OR A PROVIDER PANEL ITSELF SHALL
2 INCLUDE A STATEMENT OF THAT FACT IN 12-POINT BOLDFACE TYPE.

3 (2) EACH PERSON WHO HAS COVERAGE AUTHORIZED BY THIS ACT AND
4 EACH COMPETENT ADULT DEPENDENT OF THAT PERSON, AT THE TIME THE
5 CONTRACT PROVIDING THE COVERAGE AUTHORIZED UNDER THIS ACT IS
6 ENTERED INTO OR AT THE TIME A RIDER OR ADDENDUM CONTAINING AN
7 ARBITRATION PROVISION IS ADDED TO THE CONTRACT, SHALL INDICATE ON
8 AN ENROLLMENT CARD OR CONTRACT WHETHER HE OR SHE REJECTS OR
9 ACCEPTS THE ARBITRATION PROVISION BY SIGNING 1 OF THE STATEMENTS
10 DESCRIBED IN SUBSECTION (3) (A). FAILURE OF A PERSON WHO HAS COV-
11 ERAGE AUTHORIZED BY THIS ACT OR A COMPETENT ADULT DEPENDENT OF
12 THAT PERSON TO SIGN 1 OF THE STATEMENTS DESCRIBED IN SUBSECTION
13 (3) (A) DOES NOT INDICATE ACCEPTANCE OF THE ARBITRATION
14 PROVISION.

15 (3) SUBJECT TO SUBSECTION (7), THE CONTRACT PROVIDING COVER-
16 AGE AUTHORIZED BY THIS ACT OR RIDER OR ADDENDUM CONTAINING AN
17 ARBITRATION PROVISION SHALL ALSO PROVIDE THAT THE PERSON WHO HAS
18 COVERAGE AUTHORIZED BY THIS ACT AND EACH COMPETENT ADULT DEPEN-
19 DENT OF THAT PERSON MAY REVOKE THE AGREEMENT TO ARBITRATE AS IT
20 APPLIES TO THAT PERSON OR ADULT DEPENDENT WITHIN 60 DAYS AFTER
21 THE EFFECTIVE DATE OF THE ARBITRATION PROVISION SPECIFIED IN THE
22 CONTRACT OR 60 DAYS AFTER THE EFFECTIVE DATE OF A RIDER OR ADDEN-
23 DUM ADDING AN ARBITRATION PROVISION TO THE CONTRACT, WHICH DATE
24 SHALL BE SET FORTH IN THE CONTRACT, RIDER, OR ADDENDUM AND THAT
25 EXECUTION OF THE AGREEMENT TO ARBITRATE IS NOT A PREREQUISITE TO
26 HEALTH CARE OR TREATMENT, AND SHALL INCLUDE A STATEMENT OF THOSE
27 FACTS IN 12-POINT BOLDFACE TYPE. IN ADDITION, THE CONTRACT OR A

1 RIDER OR ADDENDUM CONTAINING AN ARBITRATION PROVISION SHALL
2 PROVIDE THAT A PERSON WHO HAS COVERAGE AUTHORIZED BY THIS ACT AND
3 EACH COMPETENT ADULT DEPENDENT OF THAT PERSON MAY REVOKE THE
4 AGREEMENT TO ARBITRATE AS IT APPLIES TO THAT PERSON OR ADULT
5 DEPENDENT ON ANY ANNIVERSARY DATE SPECIFIED IN THE CONTRACT,
6 RIDER, OR ADDENDUM OR WITHIN 10 DAYS AFTER THE ANNIVERSARY DATE.
7 THE RIGHT OF THE PERSON WHO HAS COVERAGE AUTHORIZED BY THIS ACT
8 OR COMPETENT ADULT DEPENDENT OF THAT PERSON TO REVOKE THE AGREE-
9 MENT TO ARBITRATE SHALL BE EXERCISED ONLY AS PROVIDED IN SUBSEC-
10 TION (8). AN ORGANIZATION SHALL ALSO DEVELOP AND IMPLEMENT A
11 PROCEDURE FOR NOTIFYING PERSONS TO WHOM COVERAGE AUTHORIZED BY
12 THIS ACT AND COMPETENT ADULT DEPENDENTS OF THOSE PERSONS IS
13 OFFERED AND POTENTIAL PROVIDER PANEL MEMBERS OF THE PROVISION FOR
14 ARBITRATION. THE PROCEDURE SHALL PROVIDE, AT A MINIMUM, ALL OF
15 THE FOLLOWING:

16 (A) THAT ENROLLMENT CARDS OR CONTRACTS USED BY THE ORGANI-
17 ZATION FOR COVERAGE AUTHORIZED BY THIS ACT CONTAIN, ADJACENT TO
18 THE SIGNATURE LINE OR IN ANOTHER CONSPICUOUS PLACE AND IN
19 12-POINT BOLDFACE TYPE, A STATEMENT DESCRIBING THE ARBITRATION
20 REQUIREMENT, A STATEMENT, WITH A SIGNATURE LINE WHERE THE PERSON
21 OR COMPETENT ADULT DEPENDENT MAY SIGN, STATING THAT THE PERSON OR
22 COMPETENT ADULT DEPENDENT REJECTS THE ARBITRATION PROVISION, AND
23 A STATEMENT, WITH A SIGNATURE LINE WHERE THE PERSON OR COMPETENT
24 ADULT DEPENDENT MAY SIGN, STATING THAT THE PERSON OR COMPETENT
25 ADULT DEPENDENT ACCEPTS THE ARBITRATION PROVISION.

26 (B) THAT THE ORGANIZATION PROVIDE THE PERSON WHO HAS
27 COVERAGE AUTHORIZED BY THIS ACT WITH AN INFORMATIONAL BROCHURE

1 THAT CLEARLY EXPLAINS THE ARBITRATION AGREEMENT AND REVOCATION
2 PROVISION AND IS APPROVED BY THE COMMISSIONER. THE INFORMATIONAL
3 BROCHURE SHALL BE PROVIDED TO A PERSON WHO HAS COVERAGE AUTHO-
4 RIZED BY THIS ACT BEFORE THE PERSON ACCEPTS OF REJECTS THE ARBI-
5 TRATION PROVISION. THE ORGANIZATION SHALL PROVIDE ADDITIONAL
6 COPIES OF THE BROCHURE UPON REQUEST.

7 (C) THAT FORMS FOR PRUDENT PURCHASER AGREEMENTS CONTAIN,
8 ADJACENT TO THE SIGNATURE LINE OR IN ANOTHER CONSPICUOUS PLACE
9 AND IN 12-POINT BOLDFACE TYPE, A STATEMENT DESCRIBING THE ARBI-
10 TRATION REQUIREMENT.

11 (4) ARBITRATION OF A DISPUTE BETWEEN A PROVIDER PANEL OR A
12 MEMBER OR MEMBERS OF A PROVIDER PANEL AND A PERSON WHO HAS COVER-
13 AGE AUTHORIZED BY THIS ACT OR A DEPENDENT OF THAT PERSON AS TO
14 THE MALPRACTICE OF THE MEMBER OR MEMBERS OF THE PROVIDER PANEL OR
15 THE PROVIDER PANEL ITSELF SHALL BE CONDUCTED PURSUANT TO SECTIONS
16 5043 TO 5059 OF CHAPTER 50A OF THE REVISED JUDICATURE ACT OF
17 1961, ACT NO. 236 OF THE PUBLIC ACTS OF 1961, BEING SECTIONS
18 600.5043 TO 600.5059 OF THE MICHIGAN COMPILED LAWS.

19 (5) IF A CONTRACT PROVIDING COVERAGE AUTHORIZED BY THIS ACT
20 OR RIDER OR ADDENDUM TO THE CONTRACT INCLUDES COVERAGE FOR A
21 MINOR OR INCOMPETENT ADULT DEPENDENT, AN ARBITRATION PROVISION
22 CONTAINED IN THE CONTRACT OR RIDER OR ADDENDUM IS NOT SUBJECT TO
23 DISAFFIRMANCE IF SIGNED OR OTHERWISE AGREED TO BY THE MINOR'S OR
24 INCOMPETENT ADULT DEPENDENT'S PARENT OR GUARDIAN. THIS SUBSEC-
25 TION DOES NOT PROHIBIT A PERSON WHO HAS COVERAGE AUTHORIZED BY
26 THIS ACT WHO IS A PARENT OR GUARDIAN OF A MINOR OR INCOMPETENT
27 ADULT DEPENDENT FROM REJECTING OR REVOKING AN ARBITRATION

1 PROVISION CONTAINED IN A CONTRACT PROVIDING COVERAGE AUTHORIZED
2 BY THIS ACT OR RIDER OR ADDENDUM TO SUCH A CONTRACT, AS PROVIDED
3 IN THIS SECTION.

4 (6) A PRUDENT PURCHASER AGREEMENT OR A CONTRACT PROVIDING
5 COVERAGE AS AUTHORIZED BY THIS ACT THAT HAS AN ARBITRATION PROVI-
6 SION THAT IS IN COMPLIANCE WITH SUBSECTIONS (1) AND (3) IS NOT A
7 CONTRACT OF ADHESION OR UNCONSCIONABLE OR OTHERWISE IMPROPER
8 BECAUSE OF SUCH PROVISION. SUBJECT TO SUBSECTION (2), THE ARBI-
9 TRATION PROVISION APPLIES TO ALL PERSONS COVERED UNDER THE CON-
10 TRACT, INCLUDING THEIR SPOUSES AND CHILDREN, BOTH BORN AND IN
11 UTERO, ALL INCOMPETENT ADULT DEPENDENTS OF THE PERSON WHO HAS
12 COVERAGE AUTHORIZED BY THIS ACT, AND, IN THE CASE OF A MALPRAC-
13 TICE ACTION INVOLVING THE DEATH OF A PERSON COVERED UNDER THE
14 CONTRACT, ALL PERSONS TO WHOM THE PERSON COVERED UNDER THE CON-
15 TRACT BY LAW OWED A DUTY OF SUPPORT AT THE TIME OF HIS OR HER
16 DEATH.

17 (7) AN ORGANIZATION MAY OFFER ECONOMIC INCENTIVES IN CONSID-
18 ERATION OF EITHER OR BOTH OF THE FOLLOWING:

19 (A) A PERSON WHO HAS COVERAGE AUTHORIZED UNDER THIS ACT OR A
20 COMPETENT ADULT DEPENDENT OF THAT PERSON ACCEPTING AN ARBITRATION
21 PROVISION.

22 (B) A PERSON WHO HAS COVERAGE AUTHORIZED BY THIS ACT OR A
23 COMPETENT ADULT DEPENDENT OF THAT PERSON AGREEING NOT TO EXERCISE
24 THE RIGHT TO REVOKE THE AGREEMENT TO ARBITRATE CONTAINED IN THE
25 CONTRACT PROVIDING COVERAGE AUTHORIZED BY THIS ACT.

26 (8) A PERSON WHO HAS COVERAGE AUTHORIZED BY THIS ACT OR A
27 COMPETENT ADULT DEPENDENT OF THAT PERSON MAY REVOKE THE AGREEMENT

1 TO ARBITRATE BY NOTIFYING THE ORGANIZATION IN WRITING OF THE
2 PERSON'S INTENT TO REVOKE THE ARBITRATION AGREEMENT. THE NOTICE
3 SHALL CONTAIN, AT A MINIMUM, THE PERSON'S OR DEPENDENT'S NAME,
4 ADDRESS, AND CONTRACT NUMBER, IF ANY, AND A STATEMENT OF THE
5 PERSON'S OR DEPENDENT'S INTENT TO REVOKE THE ARBITRATION
6 AGREEMENT. A REVOCATION IS EFFECTIVE AS TO HEALTH CARE SERVICES
7 RENDERED AFTER THE REVOCATION. A RECEIPT FROM A LETTER SENT BY
8 REGISTERED OR CERTIFIED MAIL OR OTHER ACKNOWLEDGEMENT OF THE
9 REVOCATION FROM THE ORGANIZATION IS PROOF OF A PERSON'S OR COMPE-
10 TENT ADULT DEPENDENT'S REVOCATION UNDER THIS SUBSECTION.

11 (9) IF A PERSON WHO HAS COVERAGE AUTHORIZED BY THIS ACT WHO
12 HAS ACCEPTED AN ARBITRATION PROVISION IN A CONTRACT PROVIDING
13 COVERAGE AUTHORIZED BY THIS ACT UNDER SUBSECTION (2) SUBSEQUENTLY
14 REJECTS AN ARBITRATION PROVISION CONTAINED IN ANOTHER HEALTH CARE
15 COVERAGE OR BENEFIT PLAN UNDER WHICH THE PERSON IS COVERED AS A
16 DEPENDENT, THE PERSON CONTINUES TO BE BOUND UNDER THE ARBITRATION
17 PROVISION IN THE CONTRACT PROVIDING COVERAGE AUTHORIZED BY THIS
18 ACT.

19 (10) IF A COMPETENT ADULT DEPENDENT WHO HAS ACCEPTED AN
20 ARBITRATION PROVISION IN A CONTRACT PROVIDING COVERAGE AUTHORIZED
21 BY THIS ACT UNDER SUBSECTION (2) SUBSEQUENTLY REJECTS AN ARBITRA-
22 TION PROVISION CONTAINED IN ANOTHER HEALTH CARE COVERAGE OR BENE-
23 FIT PLAN UNDER WHICH THE COMPETENT ADULT DEPENDENT IS ALSO COV-
24 ERED AS A DEPENDENT, AND IF THE BENEFITS OF THE CONTRACT PROVID-
25 ING COVERAGE AUTHORIZED BY THIS ACT WOULD BE DETERMINED BEFORE
26 THE BENEFITS OF THE OTHER HEALTH CARE COVERAGE OR BENEFIT PLAN
27 UNDER THE COORDINATION OF BENEFITS ACT, ACT NO. 64 OF THE PUBLIC

1 ACTS OF 1984, BEING SECTIONS 550.251 TO 550.255 OF THE MICHIGAN
2 COMPILED LAWS, THEN THE COMPETENT ADULT DEPENDENT CONTINUES TO BE
3 BOUND BY THE ARBITRATION PROVISION IN THE CONTRACT PROVIDING COV-
4 ERAGE AUTHORIZED BY THIS ACT.

5 (11) IF A PERSON WHO HAS COVERAGE AUTHORIZED BY THIS ACT WHO
6 IS A PARENT OR GUARDIAN OF A MINOR OR INCOMPETENT ADULT DEPENDENT
7 WHO IS ALSO COVERED AS A DEPENDENT UNDER ANOTHER HEALTH CARE COV-
8 ERAGE OR BENEFIT PLAN ACCEPTS AN ARBITRATION PROVISION IN A CON-
9 TRACT PROVIDING COVERAGE AUTHORIZED BY THIS ACT UNDER SUBSECTION
10 (2), AND IF THE BENEFITS OF THE CONTRACT PROVIDING COVERAGE
11 AUTHORIZED BY THIS ACT WOULD BE DETERMINED BEFORE THE BENEFITS OF
12 THE OTHER HEALTH CARE COVERAGE OR BENEFIT PLAN UNDER ACT NO. 64
13 OF THE PUBLIC ACTS OF 1984, THEN THE MINOR OR INCOMPETENT ADULT
14 DEPENDENT CONTINUES TO BE BOUND BY THE ARBITRATION PROVISION IN
15 THE CONTRACT PROVIDING COVERAGE AUTHORIZED BY THIS ACT, EVEN IF
16 AN ARBITRATION PROVISION IN THE OTHER HEALTH CARE COVERAGE OR
17 BENEFIT PLAN IS REJECTED BY ANOTHER PARENT OR GUARDIAN OF THE
18 MINOR OR INCOMPETENT ADULT DEPENDENT.

19 (12) THE COMMISSIONER SHALL SUBMIT A REPORT TO THE LEGISLA-
20 TURE ON THE EFFECT OF ARBITRATION AGREEMENTS CONTAINED IN CON-
21 TRACTS PROVIDING COVERAGE AUTHORIZED BY THIS ACT. THE REPORT
22 SHALL INCLUDE, BUT IS NOT LIMITED TO, COST SAVINGS REALIZED BY
23 ORGANIZATIONS AS A RESULT OF INCLUDING ARBITRATION AGREEMENTS IN
24 THE CONTRACTS. THE REPORT REQUIRED UNDER THIS SUBSECTION SHALL
25 BE SUBMITTED NOT LATER THAN THE EXPIRATION OF 5 YEARS AFTER THE
26 EFFECTIVE DATE OF THIS SECTION. IF THE COMMISSIONER DETERMINES
27 THAT ORGANIZATIONS USING ARBITRATION PROVISIONS IN CONTRACTS

1 PROVIDING COVERAGE AUTHORIZED BY THIS ACT HAVE REALIZED COST
2 SAVINGS AS A RESULT OF USING THE ARBITRATION PROVISIONS, THE COM-
3 MISSIONER SHALL CONSIDER THE COST SAVINGS IN MAKING RATE DETERMI-
4 NATIONS FOR ORGANIZATIONS.

5 (13) AS USED IN THIS SECTION:

6 (A) "ADULT" MEANS AN INDIVIDUAL WHO IS 18 YEARS OF AGE OR
7 OLDER.

8 (B) "MALPRACTICE" MEANS A DISPUTE, CONTROVERSY, OR ISSUE
9 ARISING OUT OF OR RESULTING FROM INJURY TO, OR THE DEATH OF, AN
10 INDIVIDUAL WHICH WAS CAUSED BY AN ERROR, OMISSION, OR NEGLIGENCE
11 IN THE PERFORMANCE OF SERVICES BY A HEALTH PROFESSIONAL, HEALTH
12 FACILITY OR AGENCY, OR THEIR AGENT OR BASED ON A CLAIMED PER-
13 FORMANCE OF SUCH SERVICES WITHOUT CONSENT, IN BREACH OF WARRANTY,
14 OR IN VIOLATION OF CONTRACT.

15 (14) THIS SECTION IS REPEALED EFFECTIVE UPON THE EXPIRATION
16 OF 6 YEARS AFTER ITS EFFECTIVE DATE.

17 Sec. 6. (1) An organization ~~which~~ THAT enters into pru-
18 dent purchaser agreements with health care providers under this
19 act shall report with its annual statement, or on a date set by
20 the commissioner, on standard forms prescribed by the commis-
21 sioner the following information:

22 (a) The number of natural persons receiving health care ben-
23 efits under prudent purchaser agreements.

24 (b) The number of individual and group contracts providing
25 health care services pursuant to prudent purchaser agreements.

26 (c) The dollar volume of business conducted under prudent
27 purchaser agreements.

1 (D) WHETHER OR NOT THE FORMS OF THE PRUDENT PURCHASER
2 AGREEMENTS OR CONTRACTS PROVIDING COVERAGE AUTHORIZED BY THIS ACT
3 CONTAIN ARBITRATION PROVISIONS AS DESCRIBED IN SECTION 3A.

4 (2) Information received by the commissioner pursuant to
5 this section shall be made available to appropriate state agen-
6 cies for purposes of reviewing and evaluating this act.

7 (3) The commissioner and state agencies shall ensure the
8 confidentiality of information containing data which may be asso-
9 ciated with a particular organization. Information pertaining to
10 the diagnosis, treatment, or health of any person receiving
11 health care benefits under prudent purchaser agreements shall be
12 confidential and shall not be disclosed to any person, except to
13 the extent that it may be necessary to carry out the purposes of
14 this act; upon the express consent of the person; pursuant to
15 statute or court order for the production of evidence or the dis-
16 covery thereof; or in the event of claim examination or litiga-
17 tion between the person and the organization, to the extent that
18 the data or information is pertinent.