

SENATE BILL No. 40

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

A bill to amend sections 204 and 401 of Act No. 350 of the
Public Acts of 1980, entitled

"The nonprofit health care corporation reform act,"

section 401 as amended by Act No. 66 of the Public Acts of 1984,
being sections 550.1204 and 550.1401 of the Michigan Compiled
Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 204 and 401 of Act No. 350 of the Public
2 Acts of 1980, section 401 as amended by Act No. 66 of the Public
3 Acts of 1984, being sections 550.1204 and 550.1401 of the
4 Michigan Compiled Laws, are amended to read as follows:

5 Sec. 204. (1) Before entering into contracts or securing
6 applications of subscribers, the persons incorporating a health
7 care corporation shall file all of the following in the office of
8 the commissioner:

1 (a) Three copies of the articles of incorporation, with the
2 certificate of the attorney general required under section 202(3)
3 attached.

4 (b) A statement showing in full detail the plan upon which
5 the corporation proposes to transact business.

6 (c) A copy of all certificates to be issued to subscribers.

7 (d) A copy of the financial statements of the corporation.

8 (e) Proposed advertising to be used in the solicitation of
9 certificates for subscribers.

10 (f) A copy of the bylaws.

11 (g) A copy of all proposed contracts and reimbursement
12 methods.

13 (2) The commissioner shall examine the statements and docu-
14 ments filed under subsection (1), may conduct any investigation
15 ~~which~~ THAT he or she considers necessary, may request addi-
16 tional oral and written information from the incorporators, and
17 may examine under oath any persons interested in or connected
18 with the proposed health care corporation. The commissioner
19 shall ascertain whether all of the following conditions are met:

20 (a) The solicitation of certificates will not work a fraud
21 upon the persons solicited by the corporation.

22 (b) The rates to be charged and the benefits to be provided
23 are adequate, equitable, and not excessive, as defined in section
24 609.

25 (c) The amount of money actually available for working capi-
26 tal is sufficient to carry all acquisition costs and operating
27 expenses for a reasonable period of time from the date of

1 issuance of the certificate of authority, and is not less than
2 \$500,000.00 or a greater amount, if the commissioner considers it
3 necessary.

4 (d) The amounts contributed as the working capital of the
5 corporation are payable only out of amounts in excess of minimum
6 required reserves of the corporation.

7 (e) Adequate and reasonable reserves are provided, as
8 defined in section 205.

9 (3) If the commissioner finds that the conditions prescribed
10 in subsection (2) are met, the commissioner shall do all of the
11 following:

12 (a) Return to the incorporators 1 copy of the articles of
13 incorporation, certified for filing with the chief officer of the
14 department of commerce or of any other agency or department
15 authorized by law to administer THE BUSINESS CORPORATION ACT, Act
16 No. 284 of the Public Acts of 1972, as amended, being sections
17 450.1101 to ~~450.2099~~ 450.2098 of the Michigan Compiled Laws, or
18 his or her designated representative, and 1 copy of the articles
19 of incorporation certified for the records of the corporation
20 itself.

21 (b) Retain 1 copy of the articles of incorporation for the
22 commissioner's office files.

23 (c) Deliver to the corporation a certificate of authority to
24 commence business and to issue certificates ~~which~~ THAT have
25 been approved by the commissioner, or which are exempted from
26 prior approval pursuant to section 607(2) or (7), entitling
27 subscribers to certain health care benefits.

1 (4) IF A HEALTH CARE CORPORATION ADDS AN ARBITRATION
2 PROVISION, AS DESCRIBED IN SECTION 401(6), TO A CERTIFICATE
3 ISSUED TO SUBSCRIBERS, THE HEALTH CARE CORPORATION SHALL NOTIFY
4 THE COMMISSIONER WITHIN 30 DAYS AFTER THE EFFECTIVE DATE OF THE
5 ARBITRATION PROVISION.

6 Sec. 401. (1) A health care corporation established, main-
7 tained, or operating in this state shall offer health care bene-
8 fits to all residents of this state, and may offer other health
9 care benefits as the corporation specifies with the approval of
10 the commissioner.

11 (2) A health care corporation may limit the health care ben-
12 efits that it will furnish, except as provided in this act, and
13 may divide the health care benefits ~~which~~ THAT it elects to
14 furnish into classes or kinds.

15 (3) A health care corporation shall not do any of the
16 following:

17 (a) Refuse to issue or continue a certificate to 1 or more
18 residents of this state, except while the individual, based on a
19 transaction or occurrence involving a health care corporation, is
20 serving a sentence arising out of a charge of fraud, is satisfy-
21 ing a civil judgment, or is making restitution pursuant to a vol-
22 untary payment agreement between the corporation and the
23 individual.

24 (b) Refuse to continue in effect a certificate with 1 or
25 more residents of this state, other than for failure to pay
26 amounts due for a certificate, except as allowed for refusal to
27 issue a certificate under subdivision (a).

1 (c) Limit the coverage available under a certificate,
2 without the prior approval of the commissioner, unless the limi-
3 tation is ~~as~~ a result of 1 OR MORE OF THE FOLLOWING: ~~an~~

4 (A) AN agreement with the person paying for the coverage.

5 ~~an~~

6 (B) AN agreement with the individual designated by the per-
7 sons paying for or contracting for the coverage. ~~or a~~

8 (C) A collective bargaining agreement.

9 (4) Nothing in subsection (3) ~~shall prevent~~ PREVENTS a
10 health care corporation from denying to a resident of this state
11 coverage under a certificate for any of the following grounds:

12 (a) That the individual was not a member of a group which
13 had contracted for coverage under this certificate.

14 (b) That the individual is not a member of a group with a
15 size greater than a minimum size established for a certificate
16 pursuant to sound underwriting requirements.

17 (c) That the individual does not meet requirements for cov-
18 erage contained in a certificate.

19 (5) A certificate may provide for the coordination of bene-
20 fits, subrogation, and the nonduplication of benefits. Savings
21 realized by the coordination of benefits, subrogation, and nondu-
22 plication of benefits shall be reflected in the rates for those
23 certificates. If a group certificate issued by the HEALTH CARE
24 corporation contains a coordination of benefits provision, the
25 benefits shall be payable pursuant to the coordination of bene-
26 fits act, ACT NO. 64 OF THE PUBLIC ACTS OF 1984, BEING SECTIONS
27 550.251 TO 550.255 OF THE MICHIGAN COMPILED LAWS.

1 (6) A CERTIFICATE OR A RIDER OR ADDENDUM TO A CERTIFICATE
2 MAY CONTAIN A PROVISION FOR THE ARBITRATION OF A DISPUTE AS TO
3 THE MALPRACTICE OF A PARTICIPATING PROVIDER. A CERTIFICATE THAT
4 CONTAINS AN ARBITRATION PROVISION SHALL INCLUDE A STATEMENT OF
5 THAT FACT IN 12-POINT BOLDFACE TYPE.

6 (7) EACH SUBSCRIBER AND EACH COMPETENT ADULT DEPENDENT OF
7 THE SUBSCRIBER, AT THE TIME THE CERTIFICATE IS ENTERED INTO OR AT
8 THE TIME A RIDER OR ADDENDUM CONTAINING AN ARBITRATION PROVISION
9 IS ADDED TO THE CERTIFICATE, SHALL INDICATE ON A CERTIFICATE
10 WHETHER HE OR SHE REJECTS OR ACCEPTS THE ARBITRATION PROVISION BY
11 SIGNING 1 OF THE STATEMENTS DESCRIBED IN SUBSECTION (8) (A) .
12 FAILURE OF A SUBSCRIBER OR COMPETENT ADULT DEPENDENT TO SIGN 1 OF
13 THE STATEMENTS DESCRIBED IN SUBSECTION (8) (A) DOES NOT INDICATE
14 ACCEPTANCE OF THE ARBITRATION PROVISION.

15 (8) SUBJECT TO SUBSECTION (11), THE CERTIFICATE OR RIDER OR
16 ADDENDUM CONTAINING AN ARBITRATION PROVISION SHALL ALSO PROVIDE
17 THAT THE SUBSCRIBER AND EACH COMPETENT ADULT DEPENDENT OF THE
18 SUBSCRIBER MAY REVOKE THE AGREEMENT TO ARBITRATE AS IT APPLIES TO
19 THE SUBSCRIBER OR ADULT DEPENDENT WITHIN 60 DAYS AFTER THE EFFEC-
20 TIVE DATE OF THE ARBITRATION PROVISION SPECIFIED IN THE CERTIFI-
21 CATE OR 60 DAYS AFTER THE EFFECTIVE DATE OF A RIDER OR ADDENDUM
22 ADDING AN ARBITRATION PROVISION TO THE CERTIFICATE, WHICH DATE
23 SHALL BE CONTAINED IN THE CERTIFICATE, RIDER, OR ADDENDUM, AND
24 THAT EXECUTION OF THE AGREEMENT TO ARBITRATE IS NOT A PREREQUI-
25 SITE TO HEALTH CARE OR TREATMENT, AND SHALL INCLUDE A STATEMENT
26 OF THOSE FACTS IN 12-POINT BOLDFACE TYPE. IN ADDITION, THE
27 CERTIFICATE, RIDER, OR ADDENDUM SHALL PROVIDE THAT A SUBSCRIBER

1 AND EACH COMPETENT ADULT DEPENDENT OF THE SUBSCRIBER MAY REVOKE
2 THE AGREEMENT TO ARBITRATE AS IT APPLIES TO THAT SUBSCRIBER OR
3 ADULT DEPENDENT ON ANY ANNIVERSARY DATE SPECIFIED IN THE CERTIFI-
4 CATE, RIDER, OR ADDENDUM OR WITHIN 10 DAYS AFTER THE ANNIVERSARY
5 DATE. THE RIGHT OF THE SUBSCRIBER OR ADULT DEPENDENT TO REVOKE
6 THE AGREEMENT TO ARBITRATE SHALL BE EXERCISED ONLY AS PROVIDED IN
7 SUBSECTION (12). A HEALTH CARE CORPORATION SHALL ALSO DEVELOP
8 AND IMPLEMENT A PROCEDURE FOR NOTIFYING POTENTIAL SUBSCRIBERS AND
9 COMPETENT ADULT DEPENDENTS OF SUBSCRIBERS OF THE PROVISION FOR
10 ARBITRATION. THE PROCEDURE SHALL PROVIDE, AT A MINIMUM, ALL OF
11 THE FOLLOWING:

12 (A) THAT ENROLLMENT CARDS OR CERTIFICATES USED BY THE HEALTH
13 CARE CORPORATION CONTAIN, ADJACENT TO THE SIGNATURE LINE OR IN
14 ANOTHER CONSPICUOUS PLACE AND IN 12-POINT BOLDFACE TYPE, A STATE-
15 MENT DESCRIBING THE ARBITRATION REQUIREMENT, A STATEMENT, WITH A
16 SIGNATURE LINE WHERE THE PERSON OR COMPETENT ADULT DEPENDENT MAY
17 SIGN, STATING THAT THE PERSON OR COMPETENT ADULT DEPENDENT
18 REJECTS THE ARBITRATION PROVISION, AND A STATEMENT, WITH A SIGNA-
19 TURE LINE WHERE THE PERSON OR COMPETENT ADULT DEPENDENT MAY SIGN,
20 STATING THAT THE PERSON OR COMPETENT ADULT DEPENDENT ACCEPTS THE
21 ARBITRATION PROVISION.

22 (B) THAT THE HEALTH CARE CORPORATION PROVIDE EACH SUBSCRIBER
23 WITH AN INFORMATIONAL BROCHURE THAT CLEARLY EXPLAINS THE ARBITRA-
24 TION AGREEMENT AND REVOCATION PROVISION AND IS APPROVED BY THE
25 COMMISSIONER. THE INFORMATIONAL BROCHURE SHALL BE PROVIDED TO A
26 SUBSCRIBER BEFORE THE SUBSCRIBER ACCEPTS OR REJECTS THE

1 ARBITRATION PROVISION. THE HEALTH CARE CORPORATION SHALL PROVIDE
2 ADDITIONAL COPIES OF THE BROCHURE UPON REQUEST.

3 (9) ARBITRATION OF A DISPUTE BETWEEN A MEMBER AND A PARTICI-
4 PATING PROVIDER SHALL BE CONDUCTED PURSUANT TO SECTIONS 5043 TO
5 5059 OF CHAPTER 50A OF THE REVISED JUDICATURE ACT OF 1961, ACT
6 NO. 236 OF THE PUBLIC ACTS OF 1961, BEING SECTIONS 600.5043 TO
7 600.5059 OF THE MICHIGAN COMPILED LAWS.

8 (10) IF A CERTIFICATE OR RIDER OR ADDENDUM INCLUDES COVERAGE
9 FOR A MINOR OR INCOMPETENT ADULT DEPENDENT, AN ARBITRATION PROVI-
10 SION CONTAINED IN THE CERTIFICATE, RIDER, OR ADDENDUM SHALL NOT
11 BE SUBJECT TO DISAFFIRMANCE IF SIGNED OR OTHERWISE AGREED TO BY
12 THE MINOR'S OR INCOMPETENT ADULT DEPENDENT'S PARENT OR GUARDIAN.
13 HOWEVER, A SUBSCRIBER WHO IS A PARENT OF A MINOR OR INCOMPETENT
14 ADULT DEPENDENT MAY STILL REJECT OR REVOKE AN ARBITRATION PROVI-
15 SION CONTAINED IN A CERTIFICATE, RIDER, OR ADDENDUM AS PROVIDED
16 IN THIS SECTION. A CERTIFICATE THAT HAS AN ARBITRATION PROVISION
17 THAT IS IN COMPLIANCE WITH THIS SUBSECTION IS NOT A CONTRACT OF
18 ADHESION OR UNCONSCIONABLE OR OTHERWISE IMPROPER BECAUSE OF THE
19 PROVISION. THE ARBITRATION PROVISION APPLIES TO ALL MEMBERS COV-
20 ERED UNDER THE CERTIFICATE, INCLUDING THEIR SPOUSES AND CHILDREN,
21 BOTH BORN AND IN UTERO, TO ALL INCOMPETENT ADULT DEPENDENTS OF
22 THE SUBSCRIBER AND IN THE CASE OF A MALPRACTICE ACTION INVOLVING
23 THE DEATH OF A MEMBER COVERED UNDER THE CERTIFICATE, ALL PERSONS
24 TO WHOM THE MEMBER BY LAW OWED A DUTY OF SUPPORT AT THE TIME OF
25 HIS OR HER DEATH.

26 (11) A HEALTH CARE CORPORATION MAY OFFER ECONOMIC INCENTIVES
27 IN CONSIDERATION OF EITHER OR BOTH OF THE FOLLOWING:

1 (A) A SUBSCRIBER'S OR ADULT DEPENDENT'S ACCEPTANCE OF AN
2 ARBITRATION PROVISION.

3 (B) A SUBSCRIBER'S OR ADULT DEPENDENT'S AGREEMENT NOT TO
4 EXERCISE THE RIGHT TO REVOKE THE AGREEMENT TO ARBITRATE CONTAINED
5 IN THE CERTIFICATE.

6 (12) A SUBSCRIBER OR COMPETENT ADULT DEPENDENT OF THE SUB-
7 SCRIBER MAY REVOKE THE AGREEMENT TO ARBITRATE BY NOTIFYING THE
8 HEALTH CARE CORPORATION IN WRITING OF THE SUBSCRIBER'S OR ADULT
9 DEPENDENT'S INTENT TO REVOKE THE ARBITRATION AGREEMENT. THE
10 NOTICE SHALL INCLUDE, AT A MINIMUM, THE SUBSCRIBER'S OR ADULT
11 DEPENDENT'S NAME, ADDRESS, AND CERTIFICATE OR CONTRACT NUMBER AND
12 A STATEMENT OF THE SUBSCRIBER'S OR ADULT DEPENDENT'S INTENT TO
13 REVOKE THE ARBITRATION AGREEMENT. A REVOCATION IS EFFECTIVE AS
14 TO HEALTH CARE SERVICES RENDERED AFTER THE REVOCATION. A RECEIPT
15 FROM A LETTER SENT BY REGISTERED OR CERTIFIED MAIL OR OTHER
16 ACKNOWLEDGMENT OF THE REVOCATION FROM THE HEALTH CARE CORPORATION
17 IS PROOF OF A SUBSCRIBER'S OR COMPETENT ADULT DEPENDENT'S REVOCATION
18 UNDER THIS SUBSECTION.

19 (13) IF A SUBSCRIBER WHO HAS ACCEPTED AN ARBITRATION PROVI-
20 SION IN A CERTIFICATE UNDER SUBSECTION (7) SUBSEQUENTLY REJECTS
21 AN ARBITRATION PROVISION CONTAINED IN ANOTHER HEALTH CARE COVER-
22 AGE OR BENEFIT PLAN UNDER WHICH THE SUBSCRIBER IS COVERED AS A
23 DEPENDENT, THE SUBSCRIBER CONTINUES TO BE BOUND UNDER THE ARBI-
24 TRATION PROVISION IN THE CERTIFICATE.

25 (14) IF A COMPETENT ADULT DEPENDENT WHO HAS ACCEPTED AN
26 ARBITRATION PROVISION IN A CERTIFICATE UNDER SUBSECTION (7)
27 SUBSEQUENTLY REJECTS AN ARBITRATION PROVISION CONTAINED IN

1 ANOTHER HEALTH CARE COVERAGE OR BENEFIT PLAN UNDER WHICH THE
2 COMPETENT ADULT DEPENDENT IS ALSO COVERED AS A DEPENDENT, AND IF
3 THE BENEFITS OF THE CERTIFICATE WOULD BE DETERMINED BEFORE THE
4 BENEFITS OF THE OTHER HEALTH CARE COVERAGE OR BENEFIT PLAN UNDER
5 ACT NO. 64 OF THE PUBLIC ACTS OF 1984, THEN THE COMPETENT ADULT
6 DEPENDENT CONTINUES TO BE BOUND BY THE ARBITRATION PROVISION IN
7 THE CERTIFICATE.

8 (15) IF A SUBSCRIBER WHO IS A PARENT OR GUARDIAN OF A MINOR
9 OR INCOMPETENT ADULT DEPENDENT WHO IS ALSO COVERED AS A DEPENDENT
10 UNDER ANOTHER HEALTH CARE COVERAGE OR BENEFIT PLAN ACCEPTS AN
11 ARBITRATION PROVISION IN A CERTIFICATE UNDER SUBSECTION (7), AND
12 IF THE BENEFITS OF THE CERTIFICATE WOULD BE DETERMINED BEFORE THE
13 BENEFITS OF THE OTHER HEALTH CARE COVERAGE OR BENEFIT PLAN UNDER
14 ACT NO. 64 OF THE PUBLIC ACTS OF 1984, THEN THE MINOR OR INCOMPE-
15 TENT ADULT DEPENDENT CONTINUES TO BE BOUND BY THE ARBITRATION
16 PROVISION IN THE CERTIFICATE, EVEN IF AN ARBITRATION PROVISION IN
17 THE OTHER HEALTH CARE COVERAGE OR BENEFIT PLAN IS REJECTED BY
18 ANOTHER PARENT OR GUARDIAN OF THE MINOR OR INCOMPETENT ADULT
19 DEPENDENT.

20 (16) THE COMMISSIONER SHALL SUBMIT A WRITTEN REPORT TO THE
21 LEGISLATURE ON THE EFFECT OF INCLUDING ARBITRATION AGREEMENTS IN
22 CERTIFICATES. THE REPORT SHALL INCLUDE, BUT IS NOT LIMITED TO,
23 COST SAVINGS REALIZED BY THE HEALTH CARE CORPORATION AS A RESULT
24 OF INCLUDING ARBITRATION AGREEMENTS IN CERTIFICATES. THE REPORT
25 SHALL BE SUBMITTED NOT LATER THAN THE EXPIRATION OF 5 YEARS AFTER
26 THE EFFECTIVE DATE OF THIS SUBSECTION. IF THE COMMISSIONER
27 DETERMINES THAT THE HEALTH CARE CORPORATION HAS REALIZED COST

1 SAVINGS AS A RESULT OF INCLUDING ARBITRATION PROVISIONS IN
2 CERTIFICATES, THE COMMISSIONER SHALL CONSIDER THE COST SAVINGS IN
3 MAKING RATE DETERMINATIONS FOR THE HEALTH CARE CORPORATION.

4 (17) UPON THE EXPIRATION OF 6 YEARS AFTER THE EFFECTIVE DATE
5 OF THE AMENDATORY ACT THAT ADDED SUBSECTIONS (6) TO (16),
6 SUBSECTIONS (6) TO (16) SHALL NOT APPLY.

7 (18) ~~—(6)—~~ A health care corporation shall have the right to
8 status as a party in interest, whether by intervention or other-
9 wise, in any judicial, quasi-judicial, or administrative agency
10 proceeding in this state for the purpose of enforcing any rights
11 it may have for reimbursement of payments made or advanced for
12 health care services on behalf of 1 or more of its subscribers or
13 members.

14 (19) ~~—(7)—~~ A health care corporation shall not directly
15 reimburse a provider in this state who has not entered into a
16 participating contract with the corporation.

17 (20) ~~—(8)—~~ A health care corporation shall not limit or deny
18 coverage to a subscriber or limit or deny reimbursement to a pro-
19 vider on the ground that services were rendered while the sub-
20 scriber was in a health care facility operated by this state or a
21 political subdivision of this state. A health care corporation
22 shall not limit or deny participation status to a health care
23 facility on the ground that the health care facility is operated
24 by this state or a political subdivision of this state, if the
25 facility meets the standards set by the corporation for all other
26 facilities of that type, government-operated or otherwise. To
27 qualify for participation and reimbursement, a facility shall, at

1 a minimum, meet all of the following requirements, which shall
2 apply to all similar facilities:

3 (a) Be accredited by the joint commission on accreditation
4 of hospitals.

5 (b) Meet the certification standards of the medicare program
6 and the medicaid program.

7 (c) Meet all statutory requirements for certificate of
8 need.

9 (d) Follow generally accepted accounting principles and
10 practices.

11 (e) Have a community advisory board.

12 (f) Have a program of utilization and peer review to assure
13 that patient care is appropriate and at an acute level.

14 (g) Designate that portion of the facility which is to be
15 used for acute care.

16 (21) AS USED IN THIS SECTION:

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

19 (B) "MALPRACTICE" MEANS A DISPUTE, CONTROVERSY, OR ISSUE
20 ARISING OUT OF OR RESULTING FROM INJURY TO, OR THE DEATH OF, AN
21 INDIVIDUAL WHICH WAS CAUSED BY AN ERROR, OMISSION, OR NEGLIGENCE
22 IN THE PERFORMANCE OF SERVICES BY A PARTICIPATING PROVIDER OR
23 THEIR AGENT OR BASED ON A CLAIMED PERFORMANCE OF SUCH SERVICES
24 WITHOUT CONSENT, IN BREACH OF WARRANTY, OR IN VIOLATION OF
25 CONTRACT.

26 (C) "MINOR" MEANS AN INDIVIDUAL WHO IS LESS THAN 18 YEARS OF
27 AGE.