

# SENATE BILL No. 244

April 9, 1991, Introduced by Senator N. SMITH and referred to the Committee on Health Policy.

A bill to amend section 21031 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

as amended by Act No. 354 of the Public Acts of 1982, being section 333.21031 of the Michigan Compiled Laws; to add section 21035 and to repeal certain parts of the act on specific dates.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Section 21031 of Act No. 368 of the Public Acts  
2 of 1978, as amended by Act No. 354 of the Public Acts of 1982,  
3 being section 333.21031 of the Michigan Compiled Laws, is amended  
4 and section 21035 is added to read as follows:

5       Sec. 21031. (1) An application to the department for a  
6 license shall be verified by an officer or authorized  
7 representative of the applicant, and shall be on a form

1 authorized and provided by the department. An application for  
2 the initial license shall include:

3 (a) A copy of the basic organizational document of the  
4 applicant, such as the articles of incorporation, articles of  
5 association, partnership agreement, trust agreement, or other  
6 applicable document, and amendments ~~thereto~~ TO THE BASIC ORGA-  
7 NIZATIONAL DOCUMENT.

8 (b) A copy of the bylaws, rules, or similar form of document  
9 regulating the conduct of the affairs of the applicant.

10 (c) A list of the names, addresses, and official positions  
11 of individuals responsible for the conduct of the health mainte-  
12 nance organization's affairs, including members of the board of  
13 directors, board of trustees, executive committee, or other gov-  
14 erning body, the officers in case of a corporation, and the part-  
15 ners or associates in case of a partnership or association. The  
16 list shall be accompanied by a disclosure statement fully dis-  
17 closing to the department the nature and extent of any contracts  
18 or arrangements between those individuals or their immediate fam-  
19 ilies, or any legal entity in which they or their immediate fami-  
20 lies have a financial interest exceeding 5% of the stock or  
21 assets of the entity, and the organization or a provider or other  
22 person concerning any financial relationship with the  
23 organization. The statement shall be signed by each individual  
24 listed and notarized. The department shall be notified of a sub-  
25 stantial change in the facts set forth in the statement not more  
26 than 30 days after the effective date of the change.

1 (d) A statement generally describing the health maintenance  
2 organization, its operations, the type and quantity of health  
3 professionals engaged to provide services, the location of facil-  
4 ities, and a description of services available at the locations  
5 at which health maintenance services will be regularly available  
6 to enrollees.

7 (e) ~~Forms~~ SUBJECT TO SUBSECTION (2), FORMS of the health  
8 maintenance contracts ~~which~~ THAT the applicant proposes to  
9 offer and the evidence of coverage issued to subscribers.

10 (f) Financial statements showing the applicant's assets,  
11 liabilities, and sources of financial support.

12 (g) A statement of projected enrollment levels, copies of  
13 solicitation materials, and a general description of the market-  
14 ing and enrollment techniques to be employed by the health main-  
15 tenance organization, including a plan for informing enrollees of  
16 the sources and methods of obtaining services and instructing  
17 them in their use.

18 (h) A statement describing with reasonable certainty the  
19 geographic area to be served by the organization.

20 (i) A statement describing the applicant's procedures for  
21 resolving enrollee complaints and conducting grievance procedures  
22 as required by this part.

23 (j) A description of procedures for monitoring the quality  
24 of health care provided to enrollees as required by this part.

25 (k) Other information reasonably required by the department  
26 and the insurance bureau for the proper administration of this  
27 article.

1           (2) A LICENSEE SHALL NOTIFY THE DEPARTMENT OF A SUBSTANTIAL  
2 CHANGE IN THE FORMS OF THE HEALTH MAINTENANCE CONTRACTS OFFERED  
3 BY THE LICENSEE, INCLUDING, BUT NOT LIMITED TO, THE ADDITION OF  
4 AN ARBITRATION PROVISION AS DESCRIBED IN SECTION 21035, WITHIN  
5 30 DAYS AFTER THE EFFECTIVE DATE OF THE CHANGE.

6           SEC. 21035. (1) A HEALTH MAINTENANCE CONTRACT OR RIDER OR  
7 ADDENDUM TO A HEALTH MAINTENANCE CONTRACT BETWEEN A HEALTH MAIN-  
8 TENANCE ORGANIZATION AND A SUBSCRIBER AND EACH COMPETENT ADULT  
9 DEPENDENT OF THE SUBSCRIBER THAT CONTAINS A PROVISION FOR ARBI-  
10 TRATION OF A DISPUTE AS TO THE MALPRACTICE OF A HEALTH PROFES-  
11 SIONAL OR HEALTH FACILITY OR AGENCY EMPLOYED BY OR UNDER CONTRACT  
12 TO THE HEALTH MAINTENANCE ORGANIZATION OR THE HEALTH MAINTENANCE  
13 ORGANIZATION ITSELF SHALL INCLUDE A STATEMENT OF THAT FACT IN  
14 12-POINT BOLDFACE TYPE.

15           (2) EACH SUBSCRIBER AND EACH COMPETENT ADULT DEPENDENT OF  
16 THE SUBSCRIBER AT THE TIME OF ENROLLMENT, OR AT THE TIME A RIDER  
17 OR ADDENDUM CONTAINING AN ARBITRATION PROVISION IS ADDED TO A  
18 HEALTH MAINTENANCE CONTRACT, SHALL INDICATE ON AN ENROLLMENT CARD  
19 OR FORM WHETHER HE OR SHE REJECTS OR ACCEPTS THE ARBITRATION PRO-  
20 VISION BY SIGNING 1 OF THE STATEMENTS DESCRIBED IN  
21 SUBSECTION (3)(A). FAILURE OF A SUBSCRIBER OR COMPETENT ADULT  
22 DEPENDENT OF A SUBSCRIBER TO SIGN 1 OF THE STATEMENTS DESCRIBED  
23 IN SUBSECTION (3)(A) DOES NOT INDICATE ACCEPTANCE OF THE ARBITRA-  
24 TION PROVISION.

25           (3) SUBJECT TO SUBSECTION (7), THE HEALTH MAINTENANCE CON-  
26 TRACT OR RIDER OR ADDENDUM CONTAINING AN ARBITRATION PROVISION  
27 SHALL ALSO PROVIDE THAT THE SUBSCRIBER AND EACH COMPETENT ADULT

1 DEPENDENT OF THE SUBSCRIBER MAY REVOKE THE AGREEMENT TO ARBITRATE  
2 AS IT APPLIES TO THE SUBSCRIBER OR ADULT DEPENDENT WITHIN 60 DAYS  
3 AFTER THE EFFECTIVE DATE OF THE ARBITRATION PROVISION SPECIFIED  
4 IN THE HEALTH MAINTENANCE CONTRACT OR 60 DAYS AFTER THE EFFECTIVE  
5 DATE OF A RIDER OR ADDENDUM ADDING AN ARBITRATION PROVISION TO A  
6 HEALTH MAINTENANCE CONTRACT, WHICH DATE SHALL BE SET FORTH IN THE  
7 CONTRACT, RIDER, OR ADDENDUM, AND THAT EXECUTION OF THE AGREEMENT  
8 TO ARBITRATE IS NOT A PREREQUISITE TO HEALTH CARE OR TREATMENT,  
9 AND SHALL INCLUDE A STATEMENT OF THOSE FACTS IN 12-POINT BOLDFACE  
10 TYPE. IN ADDITION, THE HEALTH MAINTENANCE CONTRACT OR ANY RIDER  
11 OR ADDENDUM THAT CONTAINS AN ARBITRATION PROVISION SHALL PROVIDE  
12 THAT A SUBSCRIBER AND EACH COMPETENT ADULT DEPENDENT OF THE SUB-  
13 SCRIBER MAY REVOKE THE AGREEMENT TO ARBITRATE, AS IT APPLIES TO  
14 THAT SUBSCRIBER OR COMPETENT ADULT DEPENDENT, ON ANY ANNIVERSARY  
15 OF THE EFFECTIVE DATE SPECIFIED IN THE HEALTH MAINTENANCE CON-  
16 TRACT OR RIDER OR ADDENDUM OR WITHIN 10 DAYS AFTER THE ANNIVER-  
17 SARY DATE. THE RIGHT OF THE SUBSCRIBER OR COMPETENT ADULT DEPEN-  
18 DENT TO REVOKE THE AGREEMENT TO ARBITRATE SHALL BE EXERCISED ONLY  
19 AS PROVIDED IN SUBSECTION (8). A HEALTH MAINTENANCE ORGANIZATION  
20 SHALL ALSO DEVELOP AND IMPLEMENT A PROCEDURE FOR NOTIFYING POTEN-  
21 TIAL SUBSCRIBERS AND COMPETENT ADULT DEPENDENTS OF THE PROVISION  
22 FOR ARBITRATION. THE PROCEDURE SHALL PROVIDE, AT A MINIMUM, BOTH  
23 OF THE FOLLOWING:

24 (A) THAT ENROLLMENT CARDS OR FORMS USED BY THE HEALTH MAIN-  
25 TENANCE ORGANIZATION CONTAIN, ADJACENT TO THE SIGNATURE LINE OR  
26 IN ANOTHER CONSPICUOUS PLACE AND IN 12-POINT BOLDFACE TYPE, A  
27 STATEMENT DESCRIBING THE ARBITRATION REQUIREMENT, A STATEMENT,

1 WITH A SIGNATURE LINE WHERE THE PERSON OR COMPETENT ADULT  
2 DEPENDENT MAY SIGN, STATING THAT THE PERSON OR COMPETENT ADULT  
3 DEPENDENT REJECTS THE ARBITRATION PROVISION, AND A STATEMENT,  
4 WITH A SIGNATURE LINE WHERE THE PERSON OR COMPETENT ADULT DEPENDENT  
5 MAY SIGN, STATING THAT THE PERSON OR COMPETENT ADULT DEPENDENT  
6 ACCEPTS THE ARBITRATION PROVISION.

7 (B) THAT THE HEALTH MAINTENANCE ORGANIZATION PROVIDE EACH  
8 SUBSCRIBER WITH AN INFORMATIONAL BROCHURE THAT CLEARLY EXPLAINS  
9 THE ARBITRATION REQUIREMENT AND REVOCATION PROVISION AND IS  
10 APPROVED BY THE COMMISSIONER. THE INFORMATIONAL BROCHURE SHALL  
11 BE PROVIDED TO A SUBSCRIBER BEFORE THE SUBSCRIBER ACCEPTS OR  
12 REJECTS THE ARBITRATION PROVISION. THE HEALTH MAINTENANCE ORGANIZATION  
13 SHALL PROVIDE ADDITIONAL BROCHURES UPON REQUEST.

14 (4) ARBITRATION OF A DISPUTE BETWEEN A HEALTH MAINTENANCE  
15 ORGANIZATION AND A SUBSCRIBER OR ENROLLEE AS TO THE MALPRACTICE  
16 OF A HEALTH PROFESSIONAL OR HEALTH FACILITY OR AGENCY EMPLOYED BY  
17 OR UNDER CONTRACT TO THE HEALTH MAINTENANCE ORGANIZATION OR THE  
18 HEALTH MAINTENANCE ORGANIZATION ITSELF SHALL BE CONDUCTED PURSUANT  
19 TO SECTIONS 5043 TO 5049 OF CHAPTER 50A OF THE REVISED JUDICATURE  
20 ACT OF 1961, ACT NO. 236 OF THE PUBLIC ACTS OF 1961, BEING  
21 SECTIONS 600.5043 TO 600.5059 OF THE MICHIGAN COMPILED LAWS.

22 (5) IF A HEALTH MAINTENANCE CONTRACT OR RIDER OR ADDENDUM  
23 INCLUDES AN ENROLLEE WHO IS A MINOR OR INCOMPETENT ADULT DEPENDENT,  
24 AN ARBITRATION PROVISION CONTAINED IN THE HEALTH MAINTENANCE  
25 CONTRACT OR RIDER OR ADDENDUM IS NOT SUBJECT TO DISAFFIRMANCE  
26 IF SIGNED OR OTHERWISE AGREED TO BY THE MINOR'S OR  
27 INCOMPETENT ADULT DEPENDENT'S PARENT OR GUARDIAN. THIS

1 SUBSECTION DOES NOT PROHIBIT A SUBSCRIBER WHO IS A PARENT OR  
2 GUARDIAN OF A MINOR OR INCOMPETENT ADULT DEPENDENT FROM REJECTING  
3 OR REVOKING AN ARBITRATION PROVISION CONTAINED IN A HEALTH MAIN-  
4 TENANCE CONTRACT OR RIDER OR ADDENDUM, AS PROVIDED IN THIS  
5 SECTION.

6 (6) A HEALTH MAINTENANCE CONTRACT OR RIDER OR ADDENDUM  
7 BETWEEN A HEALTH MAINTENANCE ORGANIZATION AND A SUBSCRIBER THAT  
8 HAS AN ARBITRATION PROVISION THAT IS IN COMPLIANCE WITH  
9 SUBSECTIONS (1) AND (3) IS NOT A CONTRACT OF ADHESION OR UNCON-  
10 SCIONABLE OR OTHERWISE IMPROPER BECAUSE OF THE ARBITRATION  
11 PROVISION. SUBJECT TO SUBSECTION (2), THE ARBITRATION PROVISION  
12 APPLIES TO ALL SUBSCRIBERS, THEIR SPOUSES AND CHILDREN, BOTH BORN  
13 AND IN UTERO, ALL INCOMPETENT ADULT DEPENDENTS OF THE SUBSCRIBER,  
14 AND, IN THE CASE OF A MALPRACTICE ACTION INVOLVING THE DEATH OF A  
15 SUBSCRIBER OR ENROLLEE, ALL INDIVIDUALS TO WHOM THE SUBSCRIBER OR  
16 ENROLLEE BY LAW OWED A DUTY OF SUPPORT AT THE TIME OF THE  
17 SUBSCRIBER'S OR ENROLLEE'S DEATH.

18 (7) A HEALTH MAINTENANCE ORGANIZATION MAY OFFER ECONOMIC  
19 INCENTIVES IN CONSIDERATION OF EITHER OR BOTH OF THE FOLLOWING:

20 (A) A SUBSCRIBER'S OR COMPETENT ADULT DEPENDENT'S ACCEPTANCE  
21 OF AN ARBITRATION PROVISION.

22 (B) A SUBSCRIBER'S OR COMPETENT ADULT DEPENDENT'S AGREEMENT  
23 NOT TO EXERCISE THE RIGHT TO REVOKE AN AGREEMENT TO ARBITRATE.

24 (8) A SUBSCRIBER OR COMPETENT ADULT DEPENDENT MAY REVOKE THE  
25 AGREEMENT TO ARBITRATE BY NOTIFYING THE HEALTH MAINTENANCE ORGA-  
26 NIZATION IN WRITING OF THE SUBSCRIBER'S OR DEPENDENT'S INTENT TO  
27 REVOKE THE ARBITRATION AGREEMENT. THE NOTICE SHALL INCLUDE, AT A

1 MINIMUM, THE SUBSCRIBER'S OR DEPENDENT'S NAME, ADDRESS, AND  
2 CONTRACT NUMBER, AND A STATEMENT OF THE SUBSCRIBER'S OR  
3 DEPENDENT'S INTENT TO REVOKE THE ARBITRATION AGREEMENT. A REVO-  
4 CATION IS EFFECTIVE AS TO HEALTH CARE SERVICES RENDERED AFTER THE  
5 REVOCATION. A RECEIPT FROM A LETTER SENT BY REGISTERED OR CERTI-  
6 FIED MAIL OR OTHER ACKNOWLEDGMENT OF THE REVOCATION FROM THE  
7 HEALTH MAINTENANCE ORGANIZATION IS PROOF OF A SUBSCRIBER'S OR  
8 COMPETENT ADULT DEPENDENT'S REVOCATION UNDER THIS SUBSECTION.

9 (9) IF A SUBSCRIBER WHO HAS ACCEPTED AN ARBITRATION PROVI-  
10 SION IN A HEALTH MAINTENANCE CONTRACT UNDER SUBSECTION (2) SUBSE-  
11 QUENTLY REJECTS AN ARBITRATION PROVISION CONTAINED IN ANOTHER  
12 HEALTH CARE COVERAGE OR BENEFIT PLAN UNDER WHICH THE SUBSCRIBER  
13 IS COVERED AS A DEPENDENT, THE SUBSCRIBER CONTINUES TO BE BOUND  
14 UNDER THE ARBITRATION PROVISION IN THE HEALTH MAINTENANCE  
15 CONTRACT.

16 (10) IF A COMPETENT ADULT DEPENDENT WHO HAS ACCEPTED AN  
17 ARBITRATION PROVISION IN A HEALTH MAINTENANCE CONTRACT UNDER SUB-  
18 SECTION (2) SUBSEQUENTLY REJECTS AN ARBITRATION PROVISION CON-  
19 TAINED IN ANOTHER HEALTH CARE COVERAGE OR BENEFIT PLAN UNDER  
20 WHICH THE COMPETENT ADULT DEPENDENT IS ALSO COVERED AS A DEPEN-  
21 DENT, AND IF THE BENEFITS OF THE HEALTH MAINTENANCE CONTRACT  
22 WOULD BE DETERMINED BEFORE THE BENEFITS OF THE OTHER HEALTH CARE  
23 COVERAGE OR BENEFIT PLAN UNDER THE COORDINATION OF BENEFITS ACT,  
24 ACT NO. 64 OF THE PUBLIC ACTS OF 1984, BEING SECTIONS 550.251 TO  
25 550.255 OF THE MICHIGAN COMPILED LAWS, THEN THE COMPETENT ADULT  
26 DEPENDENT CONTINUES TO BE BOUND BY THE ARBITRATION PROVISION IN  
27 THE HEALTH MAINTENANCE CONTRACT.



1       (11) IF A SUBSCRIBER WHO IS A PARENT OR GUARDIAN OF A MINOR  
2 OR INCOMPETENT ADULT DEPENDENT WHO IS ALSO COVERED AS A DEPENDENT  
3 UNDER ANOTHER HEALTH CARE COVERAGE OR BENEFIT PLAN ACCEPTS AN  
4 ARBITRATION PROVISION IN A HEALTH MAINTENANCE CONTRACT UNDER SUB-  
5 SECTION (2), AND IF THE BENEFITS OF THE HEALTH MAINTENANCE CON-  
6 TRACT WOULD BE DETERMINED BEFORE THE BENEFITS OF THE OTHER HEALTH  
7 CARE COVERAGE OR BENEFIT PLAN UNDER ACT NO. 64 OF THE PUBLIC ACTS  
8 OF 1984, THEN THE MINOR OR INCOMPETENT ADULT DEPENDENT CONTINUES  
9 TO BE BOUND BY THE ARBITRATION PROVISION IN THE HEALTH MAINTENANCE  
10 NANCE CONTRACT, EVEN IF AN ARBITRATION PROVISION IN THE OTHER  
11 HEALTH CARE COVERAGE OR BENEFIT PLAN IS REJECTED BY ANOTHER  
12 PARENT OR GUARDIAN OF THE MINOR OR INCOMPETENT ADULT DEPENDENT.

13       (12) A HEALTH MAINTENANCE ORGANIZATION THAT HAS A HEALTH  
14 MAINTENANCE CONTRACT THAT DOES NOT CONTAIN A PROVISION FOR ARBI-  
15 TRATION AS DESCRIBED IN SUBSECTION (1) ANNUALLY SHALL OFFER TO  
16 AMEND THE HEALTH MAINTENANCE CONTRACT TO INCLUDE SUCH AN ARBITRA-  
17 TION PROVISION. IN ADDITION, A HEALTH MAINTENANCE ORGANIZATION  
18 ANNUALLY SHALL OFFER TO EACH SUBSCRIBER AND TO EACH COMPETENT  
19 ADULT DEPENDENT OF THE SUBSCRIBER WHO HAS REJECTED OR REVOKED AN  
20 ARBITRATION PROVISION UNDER THIS SECTION THE OPPORTUNITY TO ENTER  
21 INTO AN ARBITRATION AGREEMENT AS DESCRIBED IN SUBSECTION (1).

22       (13) THE COMMISSIONER SHALL SUBMIT A WRITTEN REPORT TO THE  
23 LEGISLATURE ON THE EFFECT OF ARBITRATION AGREEMENTS CONTAINED IN  
24 HEALTH MAINTENANCE CONTRACTS. THE REPORT SHALL INCLUDE, BUT IS  
25 NOT LIMITED TO, COST SAVINGS REALIZED BY HEALTH MAINTENANCE ORGA-  
26 NIZATIONS USING SUCH ARBITRATION AGREEMENTS. THE REPORT REQUIRED  
27 UNDER THIS SUBSECTION SHALL BE SUBMITTED NOT LATER THAN THE

1 EXPIRATION OF 5 YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION.  
2 IF THE COMMISSIONER DETERMINES IN THE REPORT THAT THERE HAVE BEEN  
3 COST SAVINGS REALIZED BY HEALTH MAINTENANCE ORGANIZATIONS USING  
4 ARBITRATION AGREEMENTS IN HEALTH MAINTENANCE CONTRACTS, THE COM-  
5 MISSIONER SHALL CONSIDER THE COST SAVINGS IN MAKING RATE DETERMI-  
6 NATIONS FOR HEALTH MAINTENANCE ORGANIZATIONS.

7 (14) AS USED IN THIS SECTION, "MALPRACTICE" MEANS A DISPUTE,  
8 CONTROVERSY, OR ISSUE ARISING OUT OF OR RESULTING FROM INJURY TO,  
9 OR THE DEATH OF, AN INDIVIDUAL THAT WAS CAUSED BY AN ERROR, OMIS-  
10 SION, OR NEGLIGENCE IN THE PERFORMANCE OF SERVICES BY A HEALTH  
11 PROFESSIONAL, HEALTH FACILITY OR AGENCY, HEALTH MAINTENANCE ORGA-  
12 NIZATION, OR THEIR AGENT OR BASED ON A CLAIMED PERFORMANCE OF  
13 SUCH SERVICES WITHOUT CONSENT, IN BREACH OF WARRANTY, OR IN VIO-  
14 LATION OF CONTRACT.

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