

# HOUSE BILL No. 5283

October 11, 2007, Introduced by Reps. Gaffney, Angerer, Virgil Smith, Farrah, Hopgood, Mayes, Gonzales, Sheltroun, Rick Jones, Wenke, Elsenheimer, Green, LaJoy, Moore, Nitz, Ward, Ball, Palsrok, Hildenbrand, Steil, Accavitti, Wojno, Byrnes, Gillard, Condino, Polidori, Leland, Miller, Hansen, Simpson, Meadows, Lindberg, Robert Jones, Alma Smith, Spade, Ebli, Valentine, Donigan, Vagnozzi, Bieda, Cheeks, Pastor, Sak, Moolenaar, Shaffer, Griffin, Meisner, Casperson, David Law, Hune, Clemente, Corriveau, Lemmons, Scott, Bennett, Espinoza, Brown, Kathleen Law, Jackson, Clack, Hammon, Hammel, Warren, Melton, Constan, Young, Johnson, Cushingberry and Coulouris and referred to the Committee on Insurance.

A bill to amend 1980 PA 350, entitled "The nonprofit health care corporation reform act," by amending sections 308, 401e, 402b, 608, and 610 (MCL 550.1308, 550.1401e, 550.1402b, 550.1608, and 550.1610), section 401e as added by 1996 PA 516, section 402b as amended by 1999 PA 7, and section 608 as amended by 1991 PA 73, and by adding section 220; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**SEC. 220. A NONPROFIT HEALTH CARE CORPORATION IS SUBJECT TO CHAPTER 37A OF THE INSURANCE CODE OF 1956, 1956 PA 218, MCL 500.3751 TO 500.3771. TO THE EXTENT THAT A PROVISION OF THIS ACT CONCERNING INDIVIDUAL HEALTH COVERAGE, INCLUDING, BUT NOT LIMITED TO, PREMIUMS, RATES, FILINGS, AND COVERAGES, CONFLICTS WITH CHAPTER**

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1 37A OF THE INSURANCE CODE OF 1956, 1956 PA 218, MCL 500.3751 TO  
2 500.3771, THAT CHAPTER SUPERSEDES THIS ACT.

3 Sec. 308. (1) To the extent provided by resolution of the  
4 board or in the bylaws or articles, a committee established  
5 pursuant to section 307 may exercise the powers and authority of  
6 the board in management of the business and affairs of the health  
7 care corporation. The board shall review and may modify subject to  
8 the rights of third parties any action or decision of a committee.  
9 A committee shall not do any of the following:

10 (a) Amend the articles of incorporation.

11 (b) Adopt an agreement of merger or consolidation.

12 (c) Authorize the sale, lease, or exchange of all or  
13 substantially all of the corporation's property and assets.

14 (d) Approve, adopt, or amend provider contracts, provider  
15 class plans, **OR** rates charged to subscribers. ~~, or a certificate.~~

16 (e) Amend the bylaws of the corporation.

17 (f) Fill vacancies on the board.

18 (g) Fix compensation of the directors or officers.

19 (h) Perform other similar acts of a final or binding nature  
20 with respect to the business of the corporation.

21 (2) This section ~~shall~~**DOES** not prohibit emergency actions by  
22 the executive committee on behalf of the board, as authorized in  
23 the bylaws of the health care corporation.

24 Sec. 401e. ~~(1) Except as provided in this section, a health~~  
25 ~~care corporation that has issued a nongroup certificate shall renew~~  
26 ~~or continue in force the certificate at the option of the~~  
27 ~~individual.~~

1           (1) ~~(2)~~—Except as provided in this section, a health care  
2 corporation that has issued a group certificate shall renew or  
3 continue in force the certificate at the option of the sponsor of  
4 the plan.

5           (2) ~~(3)~~—Guaranteed renewal is not required in cases of fraud,  
6 intentional misrepresentation of material fact, lack of payment, if  
7 the health care corporation no longer offers that particular type  
8 of coverage in the market, or if the individual or group moves  
9 outside the service area.

10           Sec. 402b. ~~(1) For an individual covered under a nongroup~~  
11 ~~certificate or under a certificate not covered under subsection~~  
12 ~~(2), a health care corporation may exclude or limit coverage for a~~  
13 ~~condition only if the exclusion or limitation relates to a~~  
14 ~~condition for which medical advice, diagnosis, care, or treatment~~  
15 ~~was recommended or received within 6 months before enrollment and~~  
16 ~~the exclusion or limitation does not extend for more than 6 months~~  
17 ~~after the effective date of the certificate.~~

18           ~~—(2)—~~A health care corporation shall not exclude or limit  
19 coverage for a preexisting condition for an individual covered  
20 under a group certificate.

21           ~~—(3) Notwithstanding subsection (1), a health care corporation~~  
22 ~~shall not issue a certificate to a person eligible for nongroup~~  
23 ~~coverage or eligible for a certificate not covered under subsection~~  
24 ~~(2) that excludes or limits coverage for a preexisting condition or~~  
25 ~~provides a waiting period if all of the following apply:~~

26           ~~—(a) The person's most recent health coverage prior to applying~~  
27 ~~for coverage with the health care corporation was under a group~~

1 health plan.

2 ~~—— (b) The person was continuously covered prior to the~~  
3 ~~application for coverage with the health care corporation under 1~~  
4 ~~or more health plans for an aggregate of at least 18 months with no~~  
5 ~~break in coverage that exceeded 62 days.~~

6 ~~—— (c) The person is no longer eligible for group coverage and is~~  
7 ~~not eligible for medicare or medicaid.~~

8 ~~—— (d) The person did not lose eligibility for coverage for~~  
9 ~~failure to pay any required contribution or for an act to defraud a~~  
10 ~~health care corporation, a health insurer, or a health maintenance~~  
11 ~~organization.~~

12 ~~—— (e) If the person was eligible for continuation of health~~  
13 ~~coverage from that group health plan pursuant to the consolidated~~  
14 ~~omnibus budget reconciliation act of 1985, Public Law 99-272, 100~~  
15 ~~Stat. 82, he or she has elected and exhausted that coverage.~~

16 ~~—— (4) As used in this section, "group" means a group of 2 or~~  
17 ~~more subscribers.~~

18 Sec. 608. (1) ~~The rates charged to nongroup subscribers for~~  
19 ~~each certificate shall be filed in accordance with section 610 and~~  
20 ~~shall be subject to the prior approval of the commissioner.~~  
21 ~~Annually, the commissioner shall approve, disapprove, or modify and~~  
22 ~~approve the proposed or existing rates for each certificate subject~~  
23 ~~to the standard that the rates must be determined to be equitable,~~  
24 ~~adequate, and not excessive, as defined in section 609. The burden~~  
25 ~~of proof that rates to be charged meet these standards shall be~~  
26 ~~upon the health care corporation proposing to use the rates. **THE**~~  
27 **RATES CHARGED TO NONGROUP SUBSCRIBERS ARE SUBJECT TO CHAPTER 37A OF**

1 THE INSURANCE CODE OF 1956, 1956 PA 218, MCL 500.3751 TO 500.3771,  
2 AND ARE NOT SUBJECT TO SECTIONS 609 TO 613, EXCEPT FOR THE COST  
3 TRANSFERS ALLOWED IN SECTION 609(5).

4 (2) The methodology and definitions of each rating system,  
5 formula, component, and factor used to calculate rates for group  
6 subscribers for each certificate, including the methodology and  
7 definitions used to calculate administrative costs for  
8 administrative services only and cost-plus arrangements, shall be  
9 filed in accordance with section 610 and ~~shall be~~ **ARE** subject to  
10 the prior approval of the commissioner. The definition of a group,  
11 including any clustering principles applied to nongroup subscribers  
12 or small group subscribers for the purpose of group formation,  
13 ~~shall be~~ **ARE** subject to the prior approval of the commissioner.  
14 However, if a Michigan caring program is created under section 436,  
15 that program shall be defined as a group program for the purpose of  
16 establishing rates. The commissioner shall approve, disapprove, or  
17 modify and approve the methodology and definitions of each rating  
18 system, formula, component, and factor for each certificate subject  
19 to the standard that the resulting rates for group subscribers must  
20 be determined to be equitable, adequate, and not excessive, as  
21 defined in section 609. In addition, the commissioner may from time  
22 to time review the records of the corporation to determine proper  
23 application of a rating system, formula, component, or factor with  
24 respect to any group. The corporation shall refile for approval  
25 under this subsection, every 3 years, the methodology and  
26 definitions of each rating system, formula, component, and factor  
27 used to calculate rates for group subscribers, including the

1 methodology and definitions used to calculate administrative costs  
2 for administrative services only and cost-plus arrangements. The  
3 burden of proof that the resulting rates to be charged meet these  
4 standards shall be upon the health care corporation proposing to  
5 use the rating system, formula, component, or factor.

6 (3) A proposed rate shall not take effect until a filing has  
7 been made with the commissioner and approved under section 607 or  
8 ~~this section~~ **SUBSECTION (2)**, as applicable, except as provided in  
9 subsections (4) and (5).

10 (4) Upon request by a health care corporation, the  
11 commissioner may allow rate adjustments to become effective prior  
12 to approval, for federal or state mandated benefit changes.  
13 However, a filing for these adjustments shall be submitted before  
14 the effective date of the mandated benefit changes. If the  
15 commissioner disapproves or modifies and approves the rates, an  
16 adjustment shall be made retroactive to the effective date of the  
17 mandated benefit changes or additions.

18 (5) Implementation prior to approval may be allowed if the  
19 health care corporation is participating with 1 or more health care  
20 corporations to underwrite a group whose employees are located in  
21 several states. Upon request from the commissioner, the corporation  
22 shall file with the commissioner, and the commissioner shall  
23 examine, the financial arrangement, formulae, and factors. If any  
24 are determined to be unacceptable, the commissioner shall take  
25 appropriate action.

26 Sec. 610. (1) Except as provided under section 608(4) or (5),  
27 a filing of information and materials relative to a proposed rate

1 **MADE PURSUANT TO SECTION 608(2)** shall be made not less than 120  
2 days before the proposed effective date of the proposed rate. A  
3 filing shall not be considered to have been received until there  
4 has been substantial and material compliance with the requirements  
5 prescribed in ~~subsections (6) and (8)~~ **THIS SECTION.**

6 (2) Within 30 days after a filing is made of information and  
7 materials relative to a proposed rate, the commissioner shall do  
8 either of the following:

9 (a) Give written notice to the corporation, and to each person  
10 described under section 612(1), that the filing is in material and  
11 substantial compliance with ~~subsections (6) and (8)~~ **THIS SECTION**  
12 and that the filing is complete. The commissioner shall then  
13 proceed to approve, approve with modifications, or disapprove the  
14 rate filing 60 days after receipt of the filing, based upon whether  
15 the filing meets the requirements of this act. However, if a  
16 hearing has been requested under section 613, the commissioner  
17 shall not approve, approve with modifications, or disapprove a  
18 filing until the hearing has been completed and an order issued.

19 (b) Give written notice to the corporation that the  
20 corporation has not yet complied with ~~subsections (6) and (8)~~ **THIS**  
21 **SECTION.** The notice shall state specifically in what respects the  
22 filing fails to meet the requirements of ~~subsections (6) and (8)~~  
23 **THIS SECTION.**

24 (3) Within 10 days after the filing of notice pursuant to  
25 subsection (2)(b), the corporation shall submit to the commissioner  
26 such additional information and materials, as requested by the  
27 commissioner. Within 10 days after receipt of the additional

1 information and materials, the commissioner shall determine whether  
2 the filing is in material and substantial compliance with  
3 ~~subsections (6) and (8)~~ **THIS SECTION**. If the commissioner  
4 determines that the filing does not yet materially and  
5 substantially meet the requirements of ~~subsections (6) and (8)~~ **THIS**  
6 **SECTION**, the commissioner shall give notice to the corporation  
7 pursuant to subsection (2)(b) or use visitation of the  
8 corporation's facilities and examination of the corporation's  
9 records to obtain the necessary information described in the notice  
10 issued pursuant to subsection (2)(b). The commissioner shall use  
11 either procedure previously mentioned, or a combination of both  
12 procedures, in order to obtain the necessary information as  
13 expeditiously as possible. The per diem, traveling, reproduction,  
14 and other necessary expenses in connection with visitation and  
15 examination shall be paid by the corporation, and shall be credited  
16 to the general fund of the state.

17 (4) If a filing is approved, approved with modifications, or  
18 disapproved under subsection (2)(a), the commissioner shall issue a  
19 written order of the approval, approval with modifications, or  
20 disapproval. If the filing was approved with modifications or  
21 disapproved, the order shall state specifically in what respects  
22 the filing fails to meet the requirements of this act and, if  
23 applicable, what modifications are required for approval under this  
24 act. If the filing was approved with modifications, the order shall  
25 state that the filing shall take effect after the modifications are  
26 made and approved by the commissioner. If the filing was  
27 disapproved, the order shall state that the filing shall not take

1 effect.

2 (5) The inability to approve 1 or more rating classes of  
3 business within a line of business because of a requirement to  
4 submit further data or because a request for a hearing under  
5 section 613 has been granted shall not delay the approval of rates  
6 by the commissioner which could otherwise be approved or the  
7 implementation of rates already approved, unless the approval or  
8 implementation would affect the consideration of the unapproved  
9 classes of business.

10 ~~Information furnished under subsection (1) in support of a~~  
11 ~~nongroup rate filing shall include the following:~~

12 ~~(a) Recent claim experience on the benefits or comparable~~  
13 ~~benefits for which the rate filing applies.~~

14 ~~(b) Actual prior trend experience.~~

15 ~~(c) Actual prior administrative expenses.~~

16 ~~(d) Projected trend factors.~~

17 ~~(e) Projected administrative expenses.~~

18 ~~(f) Contributions for risk and contingency reserve factors.~~

19 ~~(g) Actual health care corporation contingency reserve~~  
20 ~~position.~~

21 ~~(h) Projected health care corporation contingency reserve~~  
22 ~~position.~~

23 ~~(i) Other information which the corporation considers~~  
24 ~~pertinent to evaluating the risks to be rated, or relevant to the~~  
25 ~~determination to be made under this section.~~

26 ~~(j) Other information which the commissioner considers~~  
27 ~~pertinent to evaluating the risks to be rated, or relevant to the~~

1 ~~determination to be made under this section.~~

2       (6) ~~(7)~~—A copy of the filing, and all supporting information,  
3 except for the information which may not be disclosed under section  
4 604, shall be open to public inspection as of the date filed with  
5 the commissioner.

6       (7) ~~(8)~~—The commissioner shall make available forms and  
7 instructions for filing for proposed rates under ~~sections 608(1)~~  
8 ~~and~~ **SECTION** 608(2). The forms with instructions shall be available  
9 not less than 180 days before the proposed effective date of the  
10 filing.

11       Enacting section 1. Section 614 of the nonprofit health care  
12 corporation reform act, 1980 PA 350, MCL 550.1614, is repealed.

13       Enacting section 2. This amendatory act does not take effect  
14 unless Senate Bill No. \_\_\_\_ or House Bill No. 5282(request no.  
15 03041'07\*) of the 94th Legislature is enacted into law.