

HOUSE BILL No. 5284

October 11, 2007, Introduced by Reps. Farrah, Hopgood, Virgil Smith, Condino, Polidori, Scott, Espinoza, Accavitti, Gonzales, Mayes, Gaffney, Young, Hune, Constan, Robert Jones, Simpson, Wojno, Kathleen Law, Spade, Meadows, Vagnozzi, Alma Smith, Warren, Bauer, Johnson, Melton, Rick Jones, Moore, Hammon, Ward, Clack, Clemente, Griffin, Valentine, Ebli, Lemmons, Gillard, Byrnes, Sak, Hildenbrand, Meisner, Bennett, Hammel, Leland, Miller, Angerer, Corriveau, LeBlanc, Coulouris, Hood, Sheltroun, Dean, Brown, Cheeks, Green, Moolenaar, Palsrok, Byrum, Stakoe, Hansen, David Law, LaJoy, Wenke, Donigan, Bieda, Cushingberry and Shaffer 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 202, 206, and 207 (MCL 550.1202, 550.1206, and 550.1207), section 202 as amended by 1994 PA 40 and sections 206 and 207 as amended by 2003 PA 59.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 202. (1) Persons associating to form a health care
2 corporation under this act shall subscribe to articles of
3 incorporation that shall contain all of the following:

4 (a) The names and addresses of the incorporators.

5 (b) The location of the principal office of the corporation
6 for the transaction of business in this state.

7 (c) The name by which the corporation shall be known and all

1 assumed names under which the corporation does business. The
2 corporate name shall not include the words insurance, casualty,
3 surety, health and accident, mutual, or other words descriptive of
4 the insurance or surety business, and shall not be so similar to
5 the name of an insurance or surety company doing business in this
6 or other states at the time of incorporation so as to tend, in the
7 judgment of the commissioner, to create confusion in identity with
8 that insurance or surety company.

9 (d) The purposes of the corporation, which shall be:

10 (i) To provide health care benefits.

11 (ii) To secure for all of the people of this state who apply
12 for a certificate the opportunity for access to coverage for health
13 care services at a fair and reasonable price.

14 (iii) To assure for nongroup and group subscribers reasonable
15 access to, and reasonable cost and quality of, health care
16 services.

17 (iv) To achieve the goals of the corporation relative to
18 access, quality, and cost of health care services, as prescribed in
19 section 504.

20 (v) To offer supplemental coverage to all medicare enrollees
21 as provided in part 4A.

22 (vi) If under contract to serve as fiscal intermediary for the
23 federal medicare program, to do all of the following:

24 (A) Carry out its contractual responsibilities efficiently,
25 including the timely processing and payment of claims.

26 (B) Actively represent, in negotiations with the federal
27 government and with providers of medical, hospital, and other

1 health services for which benefits are provided under the federal
2 medicare program, the interests of senior citizens as they relate
3 to cost and quality of, and access to, health care services and
4 administration of the program.

5 (vii) To engage in activity otherwise authorized by ~~this act,~~
6 ~~within~~ **LAW THAT IS IN SUPPORT OF, OR NOT INCONSISTENT WITH,** the
7 purposes for which corporations may be organized under this act **AND**
8 **TO OWN SUBSIDIARY CORPORATIONS THAT ARE ORGANIZED UNDER OTHER ACTS**
9 **AND HAVE OTHER AND DIFFERENT PURPOSES, SO LONG AS THOSE OTHER AND**
10 **DIFFERENT PURPOSES ARE NOT PROHIBITED BY LAW.**

11 (e) The term of existence of the corporation, which may be in
12 perpetuity.

13 (f) The time for the holding of the annual meeting of the
14 corporation.

15 (g) Other terms and conditions not inconsistent with this act,
16 necessary for the conduct of the affairs of the corporation.

17 (2) The articles shall be in triplicate and upon proper forms
18 as prescribed by the commissioner.

19 (3) Before the articles or amendments to the articles are
20 effective for any purpose, they shall be submitted to the attorney
21 general for examination. If the attorney general finds the articles
22 or amendments to the articles to be in compliance with this act,
23 the attorney general shall certify this finding to the
24 commissioner. The articles or amendments shall be effective at the
25 time certified by the attorney general.

26 (4) Each health care corporation shall pay a fee of \$250.00 to
27 the attorney general for the examination of its articles of

1 incorporation, or \$100.00 for the examination of amendments to the
2 articles of incorporation. Each health care corporation shall pay a
3 filing fee of \$100.00 to the commissioner for filing its articles
4 of incorporation or \$50.00 for the filing of amendments to the
5 articles of incorporation. The fees prescribed in this subsection
6 shall be deposited in the state treasury and credited to the
7 general fund of the state.

8 Sec. 206. (1) The funds and property of a health care
9 corporation shall be acquired, held, and disposed of only for the
10 lawful purposes of the corporation and for the benefit of the
11 subscribers of the corporation as a whole. A health care
12 corporation shall only transact business, receive, collect, and
13 disburse money, and acquire, hold, protect, and convey property,
14 that is properly within the scope of the purposes of the
15 corporation as specifically set forth in section 202(1)(d), for the
16 benefit of the subscribers of the corporation as a whole, and
17 consistent with this act.

18 (2) The funds of a health care corporation shall be invested
19 only in securities permitted by the laws of this state for the
20 investments of assets of life insurance companies, as described in
21 chapter 9 of the insurance code of 1956, 1956 PA 218, MCL 500.901
22 to 500.947.

23 (3) Without regard to the limitation in subsection (2), up to
24 2% of the assets of the health care corporation may be invested in
25 venture-type investments. For purposes of calculating adequate and
26 unimpaired surplus under section 204a, a venture-type investment
27 shall be carried on the books of a health care corporation at the

1 original acquisition cost, and losses may only be realized as an
2 offset against gains from venture-type investments. All venture-
3 type investments under this subsection shall provide employment or
4 capital investment primarily within this state. Each investment
5 under this subsection is subject to prior approval by the board of
6 directors. As used in this subsection, "venture-type investments"
7 include:

8 (a) Common stock, preferred stock, limited partnerships, or
9 similar equity interests acquired from the issuer subject to a
10 provision barring resale without consent of the issuer for 5 years
11 from the date of acquisition by the corporation.

12 (b) Unsecured debt instruments that are either convertible
13 into equity or have equity acquisition rights. These debt
14 instruments shall be subordinated by their terms to all borrowings
15 of the issuer from other institutional lenders and shall have no
16 part amortized during the first 5 years.

17 (4) A health care corporation shall not market or transact, as
18 defined in sections 402a and 402b of the insurance code of 1956,
19 1956 PA 218, MCL 500.402a and 500.402b, any type of insurance
20 described in chapter 6 of the insurance code of 1956, 1956 PA 218,
21 MCL 500.600 to 500.644. ~~This subsection shall not be construed to
22 prohibit the provision of prepaid health care benefits. IF~~

23 **AUTHORIZED BY A CERTIFICATE OF AUTHORITY GRANTED TO IT BY THE**
24 **COMMISSIONER, A SUBSIDIARY OF A HEALTH CARE CORPORATION MAY MARKET**
25 **OR TRANSACT, AS DEFINED IN SECTIONS 402A AND 402B OF THE INSURANCE**
26 **CODE OF 1956, 1956 PA 218, MCL 500.402A AND 500.402B, ANY TYPE OF**
27 **INSURANCE DESCRIBED IN CHAPTER 6 OF THE INSURANCE CODE OF 1956,**

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1 1956 PA 218, MCL 500.600 TO 500.644[, SO LONG AS THE HEALTH CARE
CORPORATION OR THE SUBSIDIARY OF THE HEALTH CARE CORPORATION DOES NOT
DIRECTLY OR INDIRECTLY SUBSIDIZE THE USE OF ANY PROVIDER OR SUBSCRIBER
INFORMATION, LOSS DATA, CONTRACT, AGREEMENT, REIMBURSEMENT MECHANISM OR
ARRANGEMENT, COMPUTER SYSTEM, OR HEALTH CARE PROVIDER DISCOUNT IN THE
MARKETING OR TRANSACTING OF THAT INSURANCE].

2 Sec. 207. (1) A health care corporation, subject to any
3 limitation provided in this act, in any other statute of this
4 state, or in its articles of incorporation, may do any or all of
5 the following:

6 (a) Contract to provide computer services and other
7 administrative consulting services to 1 or more providers or groups
8 of providers, if the services are primarily designed to result in
9 cost savings to subscribers.

10 (b) Engage in experimental health care projects to explore
11 more efficient and economical means of implementing the
12 corporation's programs, or the corporation's goals as prescribed in
13 section 504 and the purposes of this act, to develop incentives to
14 promote alternative methods and alternative providers, including
15 nurse midwives, nurse anesthetists, and nurse practitioners, for
16 delivering health care, including preventive care and home health
17 care.

18 (c) For the purpose of providing health care services to
19 employees of this state, the United States, or an agency,
20 instrumentality, or political subdivision of this state or the
21 United States, or for the purpose of providing all or part of the
22 costs of health care services to disabled, aged, or needy persons,
23 contract with this state, the United States, or an agency,
24 instrumentality, or political subdivision of this state or the
25 United States.

26 (d) For the purpose of administering any publicly supported
27 health benefit plan, accept and administer funds, directly or

1 indirectly, made available by a contract authorized under
2 subdivision (c), or made available by or received from any private
3 entity.

4 (e) For the purpose of administering any publicly supported
5 health benefit plan, subcontract with any organization that has
6 contracted with this state, the United States, or an agency,
7 instrumentality, or political subdivision of this state or the
8 United States, for the administration or furnishing of health
9 services or any publicly supported health benefit plan.

10 (f) Provide administrative services only and cost-plus
11 arrangements for the federal medicare program established ~~by parts~~
12 ~~A and B of~~ **UNDER** title XVIII of the social security act, ~~chapter~~
13 ~~531, 49 Stat. 620, 42 U.S.C. 1395e to 1395i, 1395i 2 to 1395i 5,~~
14 ~~1395j to 1395t, 1395u to 1395w, and 1395w 2 to 1395w 4~~ **42 USC 1395**
15 **TO 1395HHH**; for the federal medicaid program established under
16 title XIX of the social security act, ~~chapter 531, 49 Stat. 620, 42~~
17 ~~U.S.C. 1396 to 1396r 6, and 1396r 8 to 1396v~~ **42 USC 1396 TO 1396V**;
18 for title V of the social security act, chapter 531, 49 Stat. 620,
19 ~~42 U.S.C. USC 701 to 704 and 705 to 710~~; for the program of medical
20 and dental care established by the military medical benefits
21 amendments of 1966, Public Law 85-861; ~~, 80 Stat. 862~~; for the
22 Detroit maternity and infant care--preschool, school, and
23 adolescent project; and for any other health benefit program
24 established under state or federal law.

25 (g) Provide administrative services only and cost-plus
26 arrangements for any noninsured health benefit plan, subject to the
27 requirements of sections 211 and 211a.

1 (h) Establish, own, and operate a health maintenance
2 organization, subject to the requirements of the insurance code of
3 1956, 1956 PA 218, MCL 500.100 to 500.8302.

4 (i) Guarantee loans for the education of persons who are
5 planning to enter or have entered a profession that is licensed,
6 certified, or registered under parts 161 to 182 of the public
7 health code, 1978 PA 368, MCL 333.16101 to 333.18237, and has been
8 identified by the commissioner, with the consultation of the office
9 of health and medical affairs in the department of management and
10 budget, as a profession whose practitioners are in insufficient
11 supply in this state or specified areas of this state and who
12 agree, as a condition of receiving a guarantee of a loan, to work
13 in this state, or an area of this state specified in a listing of
14 shortage areas for the profession issued by the commissioner, for a
15 period of time determined by the commissioner.

16 (j) Receive donations to assist or enable the corporation to
17 carry out its purposes, as provided in this act.

18 (k) Bring an action against an officer or director of the
19 corporation.

20 (l) Designate and maintain a registered office and a resident
21 agent in that office upon whom service of process may be made.

22 (m) Sue and be sued in all courts and participate in actions
23 and proceedings, judicial, administrative, arbitratative, or
24 otherwise, in the same cases as natural persons.

25 (n) Have a corporate seal, alter the seal, and use it by
26 causing the seal or a facsimile to be affixed, impressed, or
27 reproduced in any other manner.

1 (o) Subject to chapter 9 of the insurance code of 1956, 1956
2 PA 218, MCL 500.901 to 500.947, invest and reinvest its funds and,
3 for investment purposes only, purchase, take, receive, subscribe
4 for, or otherwise acquire, own, hold, vote, employ, sell, lend,
5 lease, exchange, transfer, or otherwise dispose of, mortgage,
6 pledge, use, and otherwise deal in and with, bonds and other
7 obligations, shares, or other securities or interests issued by
8 entities other than domestic, foreign, or alien insurers, as
9 defined in sections 106 and 110 of the insurance code of 1956, 1956
10 PA 218, MCL 500.106 and 500.110, whether engaged in a similar or
11 different business, or governmental or other activity, including
12 banking corporations or trust companies. However, a health care
13 corporation may purchase, take, receive, subscribe for, or
14 otherwise acquire, own, hold, vote, employ, sell, lend, lease,
15 exchange, transfer, or otherwise dispose of bonds or other
16 obligations, shares, or other securities or interests issued by a
17 domestic, foreign, or alien insurer, so long as the activity meets
18 all of the following:

19 (i) Is determined by the attorney general to be lawful under
20 section 202.

21 (ii) Is approved in writing by the commissioner as being in the
22 best interests of the health care corporation and its subscribers.

23 (iii) For an activity that occurred before ~~the effective date of~~
24 ~~the amendatory act that added subparagraph (iv)~~ **JULY 15, 2003**, will
25 not result in the health care corporation owning or controlling 10%
26 or more of the voting securities of the insurer or will not
27 otherwise result in the health care corporation having control of

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1 the insurer, either before or after ~~the effective date of the~~
 2 ~~amendatory act that added subparagraph (iv)~~ **JULY 15, 2003**. As used
 3 in this subparagraph and subparagraph (iv), "control" means that
 4 term as defined in section 115 of the insurance code of 1956, 1956
 5 PA 218, MCL 500.115.

6 (iv) Subject to section 218 and beginning on ~~the effective date~~
 7 ~~of the amendatory act that added this subparagraph~~ **JULY 15, 2003**,
 8 will not result in the health care corporation owning or
 9 controlling part or all of the insurer unless the transaction
 10 satisfies chapter 13 of the insurance code of 1956, 1956 PA 218,
 11 MCL 500.1301 to 500.1379. ~~, and the insurer being acquired is only~~
 12 ~~authorized to sell disability insurance as defined under section~~
 13 ~~606 of the insurance code of 1956, 1956 PA 218, MCL 500.606, or~~
 14 ~~under a statute or regulation in the insurer's domiciliary~~
 15 ~~jurisdiction that is substantially similar to section 606 of the~~
 16 ~~insurance code of 1956, 1956 PA 218, MCL 500.606.~~

**[(v) FOR TRANSFERS OF CAPITAL WITHIN A HOLDING COMPANY SYSTEM, THE
 HEALTH CARE CORPORATION COMPLIES WITH, AND THE TRANSFER SATISFIES THE
 APPLICABLE PROVISIONS OF, SECTION 1341 OF THE INSURANCE CODE OF 1956,
 1956 PA 218, MCL 500.1341.]**

17 (p) Purchase, receive, take by grant, gift, devise, bequest or
 18 otherwise, lease, or otherwise acquire, own, hold, improve, employ,
 19 use and otherwise deal in and with, real or personal property, or
 20 an interest therein, wherever situated.

21 (q) Sell, convey, lease, exchange, transfer or otherwise
 22 dispose of, or mortgage or pledge, or create a security interest
 23 in, any of its property, or an interest therein, wherever situated.

24 (r) Borrow money and issue its promissory note or bond for the
 25 repayment of the borrowed money with interest.

26 (s) Make donations for the public welfare, including hospital,
 27 charitable, or educational contributions that do not significantly

1 affect rates charged to subscribers.

2 (t) Participate with others in any joint venture with respect
3 to any transaction that the health care corporation would have the
4 power to conduct by itself.

5 (u) Cease its activities and dissolve, subject to the
6 commissioner's authority under section 606(2).

7 (v) Make contracts, transact business, carry on its
8 operations, have offices, and exercise the powers granted by this
9 act in any jurisdiction, to the extent necessary to carry out its
10 purposes under this act.

11 (w) Have and exercise all powers necessary or convenient to
12 effect any purpose for which the corporation was formed.

13 (x) Notwithstanding subdivision (o) or any other provision of
14 this act, establish, own, and operate a domestic stock insurance
15 company only for the purpose of acquiring, owning, and operating
16 the state accident fund pursuant to chapter 51 of the insurance
17 code of 1956, 1956 PA 218, MCL 500.5100 to 500.5114, so long as all
18 of the following are met:

19 ~~—— (i) For insurance products and services the insurer whether~~
20 ~~directly or indirectly only transacts worker's compensation~~
21 ~~insurance and employer's liability insurance, transacts disability~~
22 ~~insurance limited to replacement of loss of earnings, and acts as~~
23 ~~an administrative services organization for an approved self-~~
24 ~~insured worker's compensation plan or a disability insurance plan~~
25 ~~limited to replacement of loss of earnings and does not transact~~
26 ~~any other type of insurance notwithstanding the authorization in~~
27 ~~chapter 51 of the insurance code of 1956, 1956 PA 218, MCL 500.5100~~

1 ~~to 500.5114. This subparagraph does not preclude the insurer from~~
2 ~~providing either directly or indirectly noninsurance products and~~
3 ~~services as otherwise provided by law.~~

4 (i) ~~(ii)~~—The activity is determined by the attorney general to
5 be lawful under section 202.

6 (ii) ~~(iii)~~—The health care corporation does not directly or
7 indirectly subsidize the use of any provider or subscriber
8 information, loss data, contract, agreement, reimbursement
9 mechanism or arrangement, computer system, or health care provider
10 discount to the insurer.

11 (iii) ~~(iv)~~—Members of the board of directors, employees, and
12 officers of the health care corporation are not, directly or
13 indirectly, employed by the insurer unless the health care
14 corporation is fairly and reasonably compensated for the services
15 rendered to the insurer if those services were paid for by the
16 health care corporation.

17 (iv) ~~(v)~~—Health care corporation and subscriber funds are used
18 only for the acquisition from the state of Michigan of the assets
19 and liabilities of the state accident fund.

20 (v) ~~(vi)~~—Health care corporation and subscriber funds are not
21 used to operate or subsidize in any way the insurer including the
22 use of such funds to subsidize contracts for goods and services.
23 This subparagraph does not prohibit joint undertakings between the
24 health care corporation and the insurer to take advantage of
25 economies of scale or arm's-length loans or other financial
26 transactions between the health care corporation and the insurer.

27 (2) In order to ascertain the interests of senior citizens

1 regarding the provision of medicare supplemental coverage, as
2 described in section 202(1)(d)(v), and to ascertain the interests of
3 senior citizens regarding the administration of the federal
4 medicare program when acting as fiscal intermediary in this state,
5 as described in section 202(1)(d)(vi), a health care corporation
6 shall consult with the office of services to the aging and with
7 senior citizens' organizations in this state.

8 (3) An act of a health care corporation, otherwise lawful, is
9 not invalid because the corporation was without capacity or power
10 to do the act. However, the lack of capacity or power may be
11 asserted:

12 (a) In an action by a director or a member of the corporate
13 body against the corporation to enjoin the doing of an act.

14 (b) In an action by or in the right of the corporation to
15 procure a judgment in its favor against an incumbent or former
16 officer or director of the corporation for loss or damage due to an
17 unauthorized act of that officer or director.

18 (c) In an action or special proceeding by the attorney general
19 to enjoin the corporation from the transacting of unauthorized
20 business, to set aside an unauthorized transaction, or to obtain
21 other equitable relief.

22 (4) A health care corporation shall not condition the sale or
23 vary the terms or conditions of any product sold by the corporation
24 or by a subsidiary of the corporation by requiring the purchase of
25 any other product from the corporation or from a subsidiary of the
26 corporation.

27 Enacting section 1. This amendatory act does not take effect

1 unless Senate Bill No. ____ or House Bill No. 5285 (request no.
2 03044'07) of the 94th Legislature is enacted into law.