

SENATE BILL No. 581

May 14, 2009, Introduced by Senators JANSEN and GEORGE and referred to the Committee on Health Policy.

A bill to amend 1980 PA 350, entitled
"The nonprofit health care corporation reform act,"
by amending the title and sections 401e, 402b, 610, 612, and 613
(MCL 550.1401e, 550.1402b, 550.1610, 550.1612, and 550.1613), the
title as amended by 1994 PA 169, section 401e as added by 1996 PA
516, and section 402b as amended by 1999 PA 7, and by adding
sections 102a, 220, 401k, and 419c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to provide for the incorporation of nonprofit health
care corporations; to provide their rights, powers, and immunities;
to prescribe the powers and duties of certain state officers
relative to the exercise of those rights, powers, and immunities;

1 to prescribe certain conditions for the transaction of business by
 2 those corporations in this state; to define the relationship of
 3 health care providers to nonprofit health care corporations and to
 4 specify their rights, powers, and immunities with respect thereto;
 5 to provide for a Michigan caring program; to provide for the
 6 regulation and supervision of nonprofit health care corporations by
 7 the commissioner of ~~insurance~~ **THE OFFICE OF FINANCIAL AND INSURANCE**
 8 **REGULATION**; to prescribe powers and duties of certain other state
 9 officers with respect to the regulation and supervision of
 10 nonprofit health care corporations; to provide for the imposition
 11 of a regulatory fee **AND OTHER FEES**; to regulate the merger or
 12 consolidation of certain corporations; to prescribe an expeditious
 13 and effective procedure for the maintenance and conduct of certain
 14 administrative appeals relative to provider class plans; to provide
 15 for certain administrative hearings relative to rates for health
 16 care benefits; to provide for certain causes of action; to
 17 prescribe penalties and to provide civil fines for violations of
 18 this act; and to repeal ~~certain~~ acts and parts of acts.

19 **SEC. 102A. (1) BY APRIL 1, 2010, AND ANNUALLY THEREAFTER, THE**
 20 **COMMISSIONER SHALL ASSESS A FEE ON EACH HEALTH CARE CORPORATION**
 21 **THAT SHALL NOT EXCEED THE AMOUNT OF LOCAL TAX AND TAX LEVIED UNDER**
 22 **THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1101 TO**
 23 **208.1601, THAT THE HEALTH CARE CORPORATION WOULD HAVE BEEN REQUIRED**
 24 **TO PAY IN THE IMMEDIATELY PRECEDING CALENDAR YEAR IF THE HEALTH**
 25 **CARE CORPORATION WERE SUBJECT TO THOSE TAXES.**

26 **(2) THE FEE ASSESSED UNDER SUBSECTION (1) SHALL BE DEPOSITED**
 27 **INTO THE MI-HEALTH FUND CREATED IN THE MI-HEALTH ACT BY NO LATER**

1 THAN 30 DAYS AFTER THE ASSESSMENT IS ISSUED UNDER SUBSECTION (1).

2 SEC. 220. A HEALTH CARE CORPORATION IS SUBJECT TO CHAPTER 37A
3 OF THE INSURANCE CODE OF 1956, 1956 PA 218, MCL 500.3751 TO
4 500.3779.

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

9 (1) ~~(2)~~ Except as provided in this section, a health care
10 corporation that has issued a group certificate shall renew or
11 continue in force the certificate at the option of the sponsor of
12 the plan.

13 (2) ~~(3)~~ Guaranteed renewal is not required in cases of fraud,
14 intentional misrepresentation of material fact, lack of payment, if
15 the health care corporation no longer offers that particular type
16 of coverage in the market, or if the individual or group moves
17 outside the service area.

18 SEC. 401K. THE RATES CHARGED TO NONGROUP, GROUP CONVERSION,
19 AND MEDICARE SUPPLEMENTAL COVERAGE MAY INCLUDE RATE DIFFERENTIALS
20 BASED ON BODY MASS INDEX AND TOBACCO USE AND THE SUBSCRIBER'S
21 PARTICIPATION IN COVERED HEALTH SCREENINGS AND COVERED WELLNESS
22 PROGRAMS.

23 Sec. 402b. ~~(1) For an individual covered under a nongroup~~
24 ~~certificate or under a certificate not covered under subsection~~
25 ~~(2), a health care corporation may exclude or limit coverage for a~~
26 ~~condition only if the exclusion or limitation relates to a~~
27 ~~condition for which medical advice, diagnosis, care, or treatment~~

~~was recommended or received within 6 months before enrollment and the exclusion or limitation does not extend for more than 6 months after the effective date of the certificate.~~

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

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

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

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

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

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

~~—— (e) If the person was eligible for continuation of health coverage from that group health plan pursuant to the consolidated omnibus budget reconciliation act of 1985, Public Law 99-272, 100~~

1 ~~Stat. 82, he or she has elected and exhausted that coverage.~~

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

4 SEC. 419C. (1) IF THE COVER MICHIGAN BOARD DETERMINES THAT
 5 SECTION 401B, 401F, 401G, 414A, 415, 416, 416A, 416B, 416C, 416D,
 6 OR 417 SHOULD BE WAIVED AS PROVIDED IN SECTION 8 OF THE MI-HEALTH
 7 ACT, THEN THE SECTIONS SO IDENTIFIED BY THE COVER MICHIGAN BOARD
 8 ARE NOT REQUIRED TO BE PROVIDED OR OFFERED IN AN ELIGIBLE HEALTH
 9 COVERAGE PLAN.

10 (2) AS USED IN THIS SECTION:

11 (A) "COVER MICHIGAN BOARD" MEANS THE COVER MICHIGAN BOARD
 12 CREATED IN SECTION 5 OF THE MI-HEALTH ACT.

13 (B) "ELIGIBLE HEALTH COVERAGE PLAN" MEANS THAT TERM AS DEFINED
 14 IN SECTION 3 OF THE MI-HEALTH ACT.

15 Sec. 610. (1) Except as provided under section 608(4) or (5),
 16 a filing of information and materials relative to a proposed rate
 17 shall be made not less than ~~120~~60 days before the proposed
 18 effective date of the proposed rate. A filing shall not be
 19 considered to have been received until there has been substantial
 20 and material compliance with the requirements prescribed in
 21 ~~subsections (6) and (8) THIS SECTION.~~

22 (2) Within ~~30~~15 days after a filing is made of information
 23 and materials relative to a proposed rate, the commissioner shall
 24 do either of the following:

25 (a) Give written notice to the corporation, and to each person
 26 described under section 612(1), that the filing is in material and
 27 substantial compliance with ~~subsections (6) and (8) THIS SECTION~~

1 and that the filing is complete. The commissioner shall then
2 proceed to approve, approve with modifications, or disapprove the
3 rate filing 60 days after receipt of the filing, based upon whether
4 the filing meets the requirements of this act. However, if a
5 hearing has been requested under section 613, the commissioner
6 shall not approve, approve with modifications, or disapprove a
7 filing until the hearing has been completed and an order issued.

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

13 (3) Within ~~10-8~~ days after the filing of notice pursuant to
14 subsection (2)(b), the corporation shall submit to the commissioner
15 such additional information and materials, as requested by the
16 commissioner. Within ~~10-8~~ days after receipt of the additional
17 information and materials, the commissioner shall determine whether
18 the filing is in material and substantial compliance with
19 ~~subsections (6) and (8)~~ **THIS SECTION**. If the commissioner
20 determines that the filing does not yet materially and
21 substantially meet the requirements of ~~subsections (6) and (8)~~ **THIS**
22 **SECTION**, the commissioner shall give notice to the corporation
23 pursuant to subsection (2)(b) or use visitation of the
24 corporation's facilities and examination of the corporation's
25 records to obtain the necessary information described in the notice
26 issued pursuant to subsection (2)(b). The commissioner shall use
27 either procedure previously mentioned, or a combination of both

1 procedures, in order to obtain the necessary information as
2 expeditiously as possible. The per diem, traveling, reproduction,
3 and other necessary expenses in connection with visitation and
4 examination shall be paid by the corporation, and shall be credited
5 to the general fund of the state.

6 (4) If a filing is approved, approved with modifications, or
7 disapproved under subsection (2)(a), the commissioner shall issue a
8 written order of the approval, approval with modifications, or
9 disapproval. If the filing was approved with modifications or
10 disapproved, the order shall state specifically in what respects
11 the filing fails to meet the requirements of this act and, if
12 applicable, what modifications are required for approval under this
13 act. If the filing was approved with modifications, the order shall
14 state that the filing shall take effect after the modifications are
15 made and approved by the commissioner. If the filing was
16 disapproved, the order shall state that the filing shall not take
17 effect.

18 (5) The inability to approve 1 or more rating classes of
19 business within a line of business because of a requirement to
20 submit further data or because a request for a hearing under
21 section 613 has been granted shall not delay the approval of rates
22 by the commissioner which could otherwise be approved or the
23 implementation of rates already approved, unless the approval or
24 implementation would affect the consideration of the unapproved
25 classes of business.

26 (6) Information furnished under subsection (1) in support of a
27 nongroup rate filing shall include the following:

1 (a) Recent claim experience on the benefits or comparable
2 benefits for which the rate filing applies.

3 (b) Actual prior trend experience.

4 (c) Actual prior administrative expenses.

5 (d) Projected trend factors.

6 (e) Projected administrative expenses.

7 (f) Contributions for risk and contingency reserve factors.

8 (g) Actual health care corporation contingency reserve
9 position.

10 (h) Projected health care corporation contingency reserve
11 position.

12 (i) Other information which the corporation considers
13 pertinent to evaluating the risks to be rated, or relevant to the
14 determination to be made under this section.

15 (j) Other information which the commissioner considers
16 pertinent to evaluating the risks to be rated, or relevant to the
17 determination to be made under this section.

18 (7) A copy of the filing, and all supporting information,
19 except for the information which may not be disclosed under section
20 604, shall be open to public inspection as of the date filed with
21 the commissioner.

22 (8) The commissioner shall make available forms and
23 instructions for filing for proposed rates under ~~sections~~ **SECTION**
24 608(1) and ~~608(2)~~ **(2)**. The forms with instructions shall be
25 available not less than ~~180~~ **90** days before the proposed effective
26 date of the filing.

27 Sec. 612. (1) Upon receipt of a rate filing under section 610,

1 the commissioner immediately shall notify each person who has
2 requested in writing notice of those filings within the previous 2
3 years, specifying the nature and extent of the proposed rate
4 revision and identifying the location, time, and place where the
5 copy of the rate filing described in section 610(7) shall be open
6 to public inspection and copying. The notice shall also state that
7 if the person has standing, the person shall have, upon making a
8 written request for a hearing within ~~60~~30 days after receiving
9 notice of the rate filing, an opportunity for an evidentiary
10 hearing under section 613 to determine whether the proposed rates
11 meet the requirements of this act. The request shall identify the
12 issues which the requesting party asserts are involved, what
13 portion of the rate filing is requested to be heard, and how the
14 party has standing. The corporation shall place advertisements
15 giving notice, containing the information specified above, in at
16 least 1 newspaper which serves each geographic area in which
17 significant numbers of subscribers reside.

18 (2) The commissioner may charge a fee for providing, pursuant
19 to subsection (1), a copy of the rate filing described in section
20 610(7). The commissioner may charge a fee for providing a copy of
21 the entire filing to a person whose request for a hearing has been
22 granted by the commissioner pursuant to section 613. The fee shall
23 be limited to actual mailing costs and to the actual incremental
24 cost of duplication, including labor and the cost of deletion and
25 separation of information as provided in section 14 of ~~Act No. 442~~
26 ~~of the Public Acts of 1976, being section 15.244 of the Michigan~~
27 ~~Compiled Laws~~ **THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL**

1 15.244. Copies of the filing may be provided free of charge or at a
2 reduced charge if the commissioner determines that a waiver or
3 reduction of the fee is in the public interest because the
4 furnishing of a copy of the filing will primarily benefit the
5 general public. In calculating the costs under this subsection, the
6 commissioner shall not attribute more than the hourly wage of the
7 lowest paid, full-time clerical employee of the ~~insurance bureau~~
8 **OFFICE OF FINANCIAL AND INSURANCE REGULATION** to the cost of labor
9 incurred in duplication and mailing and to the cost of separation
10 and deletion. The commissioner shall use the most economical means
11 available to provide copies of a rate filing.

12 Sec. 613. (1) If the request for a hearing under this section
13 is with regard to a rate filing not yet acted upon under section
14 610(2)(a), no such action shall be taken by the commissioner until
15 after the hearing has been completed. However, the commissioner
16 shall proceed to act upon those portions of a rate filing upon
17 which no hearing has been requested. Within ~~15-8~~ days after receipt
18 of a request for a hearing, the commissioner shall determine if the
19 person has standing. If the commissioner determines that the person
20 has standing, the person may have access to the entire filing
21 subject to the same confidentiality requirements as the
22 commissioner under section 604, and shall be subject to the penalty
23 provision of section 604(5). Upon determining that the person has
24 standing, the commissioner shall immediately appoint an independent
25 hearing officer before whom the hearing shall be held. In
26 appointing an independent hearing officer, the commissioner shall
27 select a person qualified to conduct hearings, who has experience

1 or education in the area of health care corporation or insurance
2 rate determination and finance, and who is not otherwise associated
3 financially with a health care corporation or a health care
4 provider. The person selected shall not be currently or actively
5 employed by this state. For purposes of this subsection, an
6 employee of an educational institution shall not be considered to
7 be employed by this state. For purposes of this section, a person
8 has "standing" if any of the following circumstances exist:

9 (a) The person is, or there are reasonable grounds to believe
10 that the person could be, aggrieved by the proposed rate.

11 (b) The person is acting on behalf of 1 or more named persons
12 described in subdivision (a).

13 (c) The person is the commissioner, the attorney general, or
14 the health care corporation.

15 (2) Not more than ~~30~~15 days after receipt of a request for a
16 hearing, and upon not less than ~~15~~8 days' notice to all parties,
17 the hearing shall be commenced. Each party to the hearing shall be
18 given a reasonable opportunity for discovery before and throughout
19 the course of the hearing. However, the hearing officer may
20 terminate discovery at any time, for good cause shown. The hearing
21 officer shall conduct the hearing pursuant to the administrative
22 procedures act. The hearing shall be conducted in an expeditious
23 manner, **AND EXCEPT FOR GOOD CAUSE SHOWN, THE HEARING OFFICER SHALL**
24 **RENDER A PROPOSAL FOR DECISION NOT LATER THAN 30 DAYS AFTER THE**
25 **START OF THE HEARING.** At the hearing, the burden of proving
26 compliance with this act shall be upon the health care corporation.

27 (3) In rendering a proposal for a decision, the hearing

1 officer shall consider the factors prescribed in section 609.

2 (4) Within ~~30~~ 8 days after receipt of the hearing officer's
3 proposal for decision, the commissioner shall by order render a
4 decision which shall include a statement of findings.

5 (5) The commissioner shall withdraw an order of approval or
6 approval with modifications if the commissioner finds that the
7 filing no longer meets the requirements of this act.

8 Enacting section 1. This amendatory act does not take effect
9 unless all of the following bills of the 95th Legislature are
10 enacted into law:

11 (a) Senate Bill No. 580.

12

13 (b) Senate Bill No. 579.

14

15 (c) Senate Bill No. 582.

16