



HOUSE BILL No. 4934

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July 13, 1993, Introduced by Reps. Saunders, Rivers and Byrum and referred to the Committee on Public Health.

A bill to amend sections 2 and 3 of Act No. 233 of the Public Acts of 1984, entitled "Prudent purchaser act," being sections 550.52 and 550.53 of the Michigan Compiled Laws; and to add sections 5a, 10a, and 10b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2 and 3 of Act No. 233 of the Public
2 Acts of 1984, being sections 550.52 and 550.53 of the Michigan
3 Compiled Laws, are amended and sections 5a, 10a, and 10b are
4 added to read as follows:

5 Sec. 2. As used in this act:

6 (A) "ADMINISTRATIVE PROCEDURES ACT OF 1969" MEANS THE ADMIN-
7 ISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS
8 OF 1969, BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED
9 LAWS.

1 (B) ~~-(a)-~~ "Commissioner" means the commissioner of
2 insurance.

3 (C) ~~-(b)-~~ "Dental care corporation" means a dental care cor-
4 poration incorporated under Act No. 125 of the Public Acts of
5 1963, being sections 550.351 to 550.373 of the Michigan Compiled
6 Laws.

7 (D) ~~-(c)-~~ "Health care corporation" means a health care cor-
8 poration incorporated under the nonprofit health care corporation
9 reform act, Act No. 350 of the Public Acts of 1980, being sec-
10 tions 550.1101 to 550.1704 of the Michigan Compiled Laws.

11 (E) ~~-(d)-~~ "Health care provider" means a health facility or
12 a person licensed, certified, or registered under parts 61 to 65
13 or 161 to 182 of the public health code, Act No. 368 of the
14 Public Acts of 1978, being sections 333.6101 to 333.6523 and
15 333.16101 to 333.18237 of the Michigan Compiled Laws. ~~However,~~
16 ~~health care provider does not include a pharmacist or pharmacy~~
17 ~~engaged in the retail sale of drugs, until January 1, 1987.~~

18 (F) ~~-(e)-~~ "Health facility" means:

19 (i) A facility or agency licensed or authorized under
20 ~~parts~~ PART 201 to 217 of the public health code, ACT NO. 368 OF
21 THE PUBLIC ACTS OF 1978, BEING SECTIONS 333.20101 TO 333.21799E
22 OF THE MICHIGAN COMPILED LAWS, or a licensed part thereof, except
23 a facility or agency licensed under part 203 of the public health
24 code.

25 (ii) A mental hospital, psychiatric hospital, psychiatric
26 unit, or mental retardation facility operated by the department
27 of mental health or certified or licensed under THE MENTAL HEALTH

1 CODE, Act No. 258 of the Public Acts of 1974, being sections
2 330.1001 to 330.2106 of the Michigan Compiled Laws.

3 (iii) A facility providing outpatient physical therapy serv-
4 ices, including speech pathology services.

5 (iv) A kidney disease treatment center, including a free-
6 standing hemodialysis unit.

7 (v) An organized ambulatory health care facility.

8 (vi) A tertiary health care service facility.

9 (vii) A substance abuse treatment program licensed under
10 parts 61 to 65 of the public health code, Act No. 368 of the
11 Public Acts of 1978, being sections 333.6101 to 333.6523 of the
12 Michigan Compiled Laws.

13 (viii) An outpatient psychiatric clinic.

14 (ix) A home health agency.

15 (G) ~~(f)~~ "Health maintenance organization" means a health
16 maintenance organization licensed under article 17 of the public
17 health code, Act No. 368 of the Public Acts of 1978, being sec-
18 tions 333.20101 to ~~333.22181~~ 333.22260 of the Michigan Compiled
19 Laws.

20 ~~(g) "Hospital service corporation" means a hospital service~~
21 ~~corporation incorporated under Act No. 109 of the Public Acts of~~
22 ~~1939, being sections 550.501 to 550.517 of the Michigan Compiled~~
23 ~~Laws.~~

24 (h) "Insurer" means an insurer as defined in section 106 of
25 the insurance code of 1956, Act No. 218 of the Public Acts of
26 1956, being section 500.106 of the Michigan Compiled Laws.

1 ~~(i) "Medical care corporation" means a medical care~~
 2 ~~corporation incorporated under Act No. 100 of the Public Acts of~~
 3 ~~1939, being sections 550.301 to 550.316 of the Michigan Compiled~~
 4 ~~Laws.~~

5 (I) ~~(j)~~ "Organization" means an insurer, a dental care
 6 corporation, ~~hospital service corporation, medical care~~
 7 ~~corporation,~~ health care corporation, or third party
 8 administrator.

9 (J) "PLAN MEMBER" MEANS AN INDIVIDUAL WHO RECEIVES OR IS
 10 ELIGIBLE FOR HEALTH CARE SERVICES UNDER A PRUDENT PURCHASER
 11 AGREEMENT.

12 (k) "Provider panel" means a panel of health care providers
 13 providing health care services pursuant to a prudent purchaser
 14 agreement.

15 (l) "Prudent purchaser agreement" means an agreement between
 16 an organization and a health care provider pursuant to
 17 section 3.

18 (m) "Third party administrator" means an administrator oper-
 19 ating under a certificate of authority issued by the commissioner
 20 pursuant to the third party administrator act, ACT NO. 218 OF THE
 21 PUBLIC ACTS OF 1984, BEING SECTIONS 550.901 TO 550.962 OF THE
 22 MICHIGAN COMPILED LAWS.

23 Sec. 3. (1) ~~An~~ EXCEPT AS PROVIDED IN SUBSECTION (2), AN
 24 organization may enter into A prudent purchaser ~~agreements~~
 25 AGREEMENT with 1 or more health care providers of a specific
 26 service to control health care costs, assure appropriate
 27 utilization of health care services, and maintain quality of

1 health care. The organization may limit the number of prudent
2 purchaser agreements entered into pursuant to this section ~~if~~ if
3 the number of ~~such~~ agreements is sufficient to assure reason-
4 able levels of access to health care services for recipients of
5 those services. The number of prudent purchaser agreements
6 authorized by this section ~~which~~ THAT are necessary to assure
7 reasonable levels of access to health care services for recip-
8 ients shall be determined by the organization. However, the
9 organization shall offer a prudent purchaser agreement, com-
10 parable to those agreements with other members of the provider
11 panel, to a health care provider located within a reasonable dis-
12 tance from the recipients of ~~such~~ THOSE health care services
13 ~~if~~ if a health care provider is located within that reasonable
14 distance.

15 (2) AN ORGANIZATION THAT CONTROLS 15% OR MORE OF THE HEALTH
16 CARE COVERAGE MARKET OR 15% OR MORE OF ANY SPECIFIC MEDICAL SERV-
17 ICE IN THIS STATE SHALL NOT ESTABLISH OR OPERATE, DIRECTLY OR
18 INDIRECTLY, A PRUDENT PURCHASER AGREEMENT.

19 (3) A PRUDENT PURCHASER AGREEMENT SHALL NOT BE USED TO
20 CREATE A MONOPOLY. AS USED IN THIS SUBSECTION, "MONOPOLY" MEANS
21 CONTROL OF 15% OR MORE OF THE STATE'S OVERALL HEALTH CARE COVER-
22 AGE MARKET OR CONTROL OF 15% OR MORE OF ANY SPECIFIC MEDICAL
23 SERVICE IN THE STATE.

24 (4) ~~(2)~~ An organization shall give interested health care
25 providers located in the geographic area served by the organi-
26 zation an opportunity to apply to the organization for membership
27 on the provider panel.

1 (5) ~~(3) Prudent~~ A PRUDENT PURCHASER AGREEMENT SHALL NOT
2 REDUCE EXISTING COMMUNITY HEALTH CARE STANDARDS, INCLUDING, BUT
3 NOT LIMITED TO, QUALITY, COSTS, AND APPROPRIATE UTILIZATION OF,
4 AND ACCESS TO, HEALTH CARE. A PRUDENT purchaser ~~agreements~~
5 AGREEMENT shall be based upon the following written standards
6 which shall be filed by the organization with the commissioner on
7 a form and in a manner that is uniformly developed and applied by
8 the commissioner before the initial provider panel is formed:

- 9 (a) Standards for maintaining quality health care.
10 (b) Standards for controlling health care costs.
11 (c) Standards for assuring appropriate utilization of health
12 care services.
13 (d) Standards for assuring reasonable levels of access to
14 health care services.
15 (e) Other standards ~~deemed~~ CONSIDERED appropriate by the
16 organization.

17 (6) A PRUDENT PURCHASER AGREEMENT SHALL BE FILED WITH THE
18 COMMISSIONER ON A FORM PRESCRIBED BY HIM OR HER AND SHALL NOT BE
19 IMPLEMENTED UNTIL IT RECEIVES THE COMMISSIONER'S APPROVAL. IF
20 THE COMMISSIONER DOES NOT APPROVE A PRUDENT PURCHASER AGREEMENT,
21 AN AFFECTED ORGANIZATION OR HEALTH CARE PROVIDER IS ENTITLED TO A
22 HEARING ON THE MATTER CONDUCTED BEFORE THE COMMISSIONER PURSUANT
23 TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969.

24 (7) ~~(4)~~ An organization shall develop and institute proce-
25 dures ~~which~~ THAT are designed to notify health care providers
26 located in the geographic area served by the organization of the
27 formation of a provider panel. Upon receipt of a request by a

1 health care provider, the organization shall provide the written
2 standards described in subsection ~~(3)~~ (5) to the health care
3 provider. EACH HEALTH CARE PROVIDER THAT MEETS THE WRITTEN STAN-
4 DARDS DESCRIBED IN SUBSECTION (5) AND THAT IS LOCATED WITHIN THE
5 SERVICE AREA OR THAT CAN PROVIDE SERVICE IN THAT AREA SHALL BE
6 ACCEPTED AS A MEMBER OF THE PROVIDER PANEL.

7 (8) ~~(5)~~ An organization ~~which~~ THAT enters into prudent
8 purchaser agreements with health care providers under this act
9 shall institute a program for the professional review of the
10 quality of health care, performance of health care personnel, and
11 utilization of services and facilities under a prudent purchaser
12 agreement. At least every 2 years, the organization shall pro-
13 vide for an evaluation of its professional review program by a
14 professionally recognized independent third party.

15 (9) AN ENTITY THAT PERFORMS UTILIZATION AND REVIEW ACTIVI-
16 TIES FOR A PRUDENT PURCHASER AGREEMENT SHALL FILE ITS UTILIZATION
17 AND REVIEW PLAN WITH, AND RECEIVE APPROVAL OF IT BY, THE
18 COMMISSIONER.

19 (10) ~~(6)~~ If 2 or more classes of health care providers may
20 legally provide the same health care service, the organization
21 shall offer each class of health care providers the opportunity
22 to apply to the organization for membership on the provider
23 panel.

24 (11) ~~(7)~~ Each prudent purchaser agreement shall state that
25 the health care provider may be removed from the provider panel
26 before the expiration of the agreement if the provider does not
27 comply with the requirements of the contract.

1 (12) ~~(8) Nothing in this~~ THIS act ~~shall~~ DOES NOT
2 preclude a health care provider or health care facility from
3 being a member of more than 1 provider panel.

4 (13) A PRUDENT PURCHASER AGREEMENT SHALL NOT UNREASONABLY
5 RESTRICT OR REDUCE ACCESS TO HEALTH CARE SERVICES. AS USED IN
6 THIS SUBSECTION, "REASONABLE ACCESS TO HEALTH CARE SERVICES"
7 MEANS THAT A PLAN MEMBER HAS ACCESS, WITHIN THE PLAN'S SERVICE
8 AREA, TO HEALTH CARE FROM NOT LESS THAN 75% OF EACH TYPE OF MEDI-
9 CAL PROVIDER THAT IS INCLUDED IN THE PLAN. IN DETERMINING
10 WHETHER THIS STANDARD IS MET, MEDICAL DOCTORS AND DOCTORS OF
11 OSTEOPATHY SHALL BE CATEGORIZED BY SPECIALTY. USING THE CRITE-
12 RION SET FORTH IN THIS SUBSECTION, THE COMMISSIONER SHALL DETER-
13 MINE WHETHER A PRUDENT PURCHASER AGREEMENT PROVIDES PLAN MEMBERS
14 WITH A REASONABLE LEVEL OF ACCESS TO HEALTH CARE SERVICES.

15 (14) ~~(9) Provider panels~~ A PROVIDER PANEL may include
16 health care providers and facilities outside Michigan when neces-
17 sary to assure reasonable levels of access to health care serv-
18 ices under coverage authorized by this act.

19 (15) A PRUDENT PURCHASER AGREEMENT SHALL NOT INVOLVE ANY
20 FORM OF KICKBACKS OR PREFERENTIAL PAYMENTS TO PROVIDERS THAT ARE
21 USED AS INCENTIVES TO SHIFT MARKET SHARES.

22 (16) ~~(10)~~ At the time coverage authorized by this act is
23 offered to a person, the organization shall give or cause to be
24 given to the person the following information:

25 (a) The identity of the organization contracting with the
26 provider panel.

1 (b) The identity of the party sponsoring the coverage
2 including, but not limited to, the employer.

3 (c) The identity of the collective bargaining agent if the
4 coverage is offered pursuant to a collective bargaining
5 agreement.

6 (17) A HEALTH CARE PROVIDER SHALL FURNISH TO A PLAN MEMBER
7 OR BENEFICIARY OF A PLAN MEMBER A WRITTEN EXPLANATION, AS APPLI-
8 CABLE, OF ANY COPAYMENT, DEDUCTIBLE, BALANCE BILLING POTENTIAL,
9 AND LIMIT OR RESTRICTION ON PAYMENTS FOR COVERED HEALTH CARE
10 SERVICES OR LIMIT ON ACCESS TO HEALTH CARE SERVICES.

11 (18) ~~-(11)-~~ If a person who has coverage authorized by this
12 act is entitled to receive a health care service when rendered by
13 a health care provider who is a member of the provider panel, the
14 person ~~shall be~~ IS entitled to receive the health care service
15 from a health care provider who is not a member of the provider
16 panel for an emergency episode of illness or injury ~~which~~ THAT
17 requires immediate treatment before it can be obtained from a
18 health care provider who is on the provider panel.

19 (19) ~~-(12)- Subsections (2) to (11) shall~~ THIS SECTION DOES
20 not limit the authority of ~~organizations~~ AN ORGANIZATION to
21 limit the number of prudent purchaser agreements.

22 SEC. 5A. A HEALTH CARE PROVIDER WHO IS A MEMBER OF A PRO-
23 VIDER PANEL SHALL NOT REFER A PLAN MEMBER TO ANOTHER HEALTH CARE
24 PROVIDER IN WHICH THE REFERRING PROVIDER HAS A FINANCIAL
25 INTEREST.

26 SEC. 10A. EXCEPT AS PROVIDED IN SECTION 4, UPON RECEIPT OF
27 A COMPLAINT OF A VIOLATION OF THIS ACT, IN A FORM SATISFACTORY TO

1 THE COMMISSIONER, AND IF THE COMMISSIONER HAS PROBABLE CAUSE TO
2 BELIEVE THAT A VIOLATION HAS OCCURRED, THE COMMISSIONER SHALL
3 CONDUCT A HEARING PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT
4 OF 1969. IF AFTER THE HEARING THE COMMISSIONER DETERMINES THAT
5 THE ORGANIZATION OR HEALTH CARE PROVIDER HAS VIOLATED THIS ACT,
6 THE COMMISSIONER MAY DO 1 OR MORE OF THE FOLLOWING:

7 (A) ISSUE A CEASE AND DESIST ORDER REQUIRING THE ORGANI-
8 ZATION OR HEALTH CARE PROVIDER, AS APPROPRIATE, FROM ENGAGING IN
9 THE CONDUCT PROHIBITED BY THIS ACT.

10 (B) IMPOSE A CIVIL FINE OF NOT MORE THAN \$1,000.00 FOR EACH
11 VIOLATION.

12 (C) IMPOSE A CIVIL FINE OF NOT MORE THAN \$5,000.00 FOR EACH
13 WILLFUL, REPEATED, OR CONTINUING VIOLATION.

14 (D) WITHDRAW APPROVAL OF THE PRUDENT PURCHASER AGREEMENT AND
15 REQUIRE ORGANIZATIONS AND HEALTH CARE PROVIDERS TO CEASE OPERAT-
16 ING UNDER IT FOR A WILLFUL, REPEATED, OR CONTINUING VIOLATION.

17 SEC. 10B. THE COMMISSIONER SHALL PROMULGATE, AS NECESSARY,
18 RULES TO IMPLEMENT THIS ACT PURSUANT TO THE ADMINISTRATIVE PROCE-
19 DURES ACT OF 1969. THE RULES SHALL INCLUDE, BUT NOT BE LIMITED
20 TO, UTILIZATION AND REVIEW ACTIVITIES AS THEY RELATE TO PRUDENT
21 PURCHASER AGREEMENTS.