

HOUSE BILL No. 4553

April 9, 2003, Introduced by Rep. Ehardt and referred to the Committee on Health Policy.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 3406q (MCL 500.3406q), as added by 2002 PA
538, and by adding chapter 37.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3406q. (1) An expense-incurred hospital, medical, or
2 surgical policy or certificate delivered, issued for delivery, or
3 renewed in this state that provides pharmaceutical coverage and a
4 health maintenance organization contract **that provides**
5 **pharmaceutical coverage** shall provide coverage for an off-label
6 use of a federal food and drug administration approved drug and
7 the reasonable cost of supplies medically necessary to administer
8 the drug.

9 (2) Coverage for a drug under subsection (1) applies if all
10 of the following conditions are met:

1 (a) The drug is approved by the federal food and drug
2 administration.

3 (b) The drug is prescribed by an allopathic or osteopathic
4 physician for the treatment of either of the following:

5 (i) A life-threatening condition so long as the drug is
6 medically necessary to treat that condition and the drug is on
7 the plan formulary or accessible through the health plan's
8 formulary procedures.

9 (ii) A chronic and seriously debilitating condition so long
10 as the drug is medically necessary to treat that condition and
11 the drug is on the plan formulary or accessible through the
12 health plan's formulary procedures.

13 (c) The drug has been recognized for treatment for the
14 condition for which it is prescribed by 1 of the following:

15 (i) The American medical association drug evaluations.

16 (ii) The American hospital formulary service drug
17 information.

18 (iii) The United States pharmacopoeia dispensing information,
19 volume 1, "drug information for the health care professional".

20 (iv) Two articles from major peer-reviewed medical journals
21 that present data supporting the proposed off-label use or uses
22 as generally safe and effective unless there is clear and
23 convincing contradictory evidence presented in a major
24 peer-reviewed medical journal.

25 (3) Upon request, the prescribing allopathic or osteopathic
26 physician shall supply to the insurer or health maintenance
27 organization documentation supporting compliance with

1 subsection (2).

2 (4) This section does not prohibit the use of a copayment,
3 deductible, sanction, or a mechanism for appropriately
4 controlling the utilization of a drug that is prescribed for a
5 use different from the use for which the drug has been approved
6 by the food and drug administration. This may include prior
7 approval or a drug utilization review program. Any copayment,
8 deductible, sanction, prior approval, drug utilization review
9 program, or mechanism described in this subsection shall not be
10 more restrictive than for prescription coverage generally.

11 (5) As used in this section:

12 (a) "Chronic and seriously debilitating" means a disease or
13 condition that requires ongoing treatment to maintain remission
14 or prevent deterioration and that causes significant long-term
15 morbidity.

16 (b) "Life-threatening" means a disease or condition where the
17 likelihood of death is high unless the course of the disease is
18 interrupted or that has a potentially fatal outcome where the end
19 point of clinical intervention is survival.

20 (c) "Off-label" means the use of a drug for clinical
21 indications other than those stated in the labeling approved by
22 the federal food and drug administration.

23 **CHAPTER 37**

24 **SMALL EMPLOYER GROUP HEALTH COVERAGE**

25 **Sec. 3701. As used in this chapter:**

26 (a) "Actuarial certification" means a written statement by a
27 member of the American academy of actuaries or another individual

1 acceptable to the commissioner that a small employer carrier is
2 in compliance with the provisions of section 3705, based upon the
3 person's examination, including a review of the appropriate
4 records and the actuarial assumptions and methods used by the
5 carrier in establishing premium rates for applicable health
6 benefit plans.

7 (b) "Affiliation period" means a period of time required by a
8 small employer carrier that must expire before health coverage
9 becomes effective.

10 (c) "Carrier" means a person that provides health benefits,
11 coverage, or insurance in this state. For the purposes of this
12 chapter, carrier includes a health insurance company authorized
13 to do business in this state, a nonprofit health care
14 corporation, a health maintenance organization, a multiple
15 employer welfare arrangement, or any other person providing a
16 plan of health benefits, coverage, or insurance subject to state
17 insurance regulation.

18 (d) "COBRA" means the consolidated omnibus budget
19 reconciliation act of 1985, Public Law 99-272, 100 Stat. 82.

20 (e) "Creditable coverage" means, with respect to an
21 individual, health benefits, coverage, or insurance provided
22 under any of the following:

23 (i) A group health plan.

24 (ii) A health benefit plan.

25 (iii) Part A or part B of title XVIII of the social security
26 act, chapter 531, 49 Stat. 620, 42 U.S.C. 1395c to 1395i and
27 1395i-2 to 1395i-5, and 42 U.S.C. 1395j to 1395t, 1395u to 1395w,

1 and 1395w-2 to 1395w-4.

2 (iv) Title XIX of the social security act, chapter 531, 49
3 Stat. 620, 42 U.S.C. 1396 to 1396r-6 and 1396r-8 to 1396v, other
4 than coverage consisting solely of benefits under section 1929 of
5 title XIX of the social security act, 42 U.S.C. 1396t.

6 (v) Chapter 55 of title 10 of the United States Code, 10
7 U.S.C. 1071 to 1110. For purposes of chapter 55 of title 10 of
8 the United States Code, 10 U.S.C. 1071 to 1110, "uniformed
9 services" means the armed forces and the commissioned corps of
10 the national oceanic and atmospheric administration and of the
11 public health service.

12 (vi) A medical care program of the Indian health service or
13 of a tribal organization.

14 (vii) A state health benefits risk pool.

15 (viii) A health plan offered under the employees health
16 benefits program, chapter 89 of title 5 of the United States
17 Code, 5 U.S.C. 8901 to 8914.

18 (ix) A public health plan, which for purposes of this chapter
19 means a plan established or maintained by a state, county, or
20 other political subdivision of a state that provides health
21 insurance coverage to individuals enrolled in the plan.

22 (x) A health benefit plan under section 5(e) of title I of
23 the peace corps act, Public Law 87-293, 22 U.S.C. 2504.

24 (f) "Eligible employee" means an employee who works on a
25 full-time basis with a normal workweek of 30 or more hours.
26 Eligible employee includes an employee who works on a full-time
27 basis with a normal workweek of 17.5 to 30 hours, if an employer

1 so chooses and if this eligibility criterion is applied uniformly
2 among all of the employer's employees and without regard to
3 health status-related factors.

4 (g) "Geographic area" means an area in this state that
5 includes not less than 1 entire county, established by a carrier
6 pursuant to section 3705 and used for adjusting rates for a
7 health benefit plan subject to this chapter.

8 (h) "Group health plan" means an employee welfare benefit
9 plan as defined in section 3(1) of subtitle A of title I of the
10 employee retirement income security act of 1974, Public Law
11 93-406, 29 U.S.C. 1002, to the extent that the plan provides
12 medical care, including items and services paid for as medical
13 care to employees or their dependents as defined under the terms
14 of the plan directly or through insurance, reimbursement, or
15 otherwise. As used in this chapter, all of the following apply
16 to the term group health plan:

17 (i) Any plan, fund, or program that would not be, but for
18 section 2721(e) of subpart 4 of part A of title XXVII of the
19 public health service act, chapter 373, 110 Stat. 1967, 42
20 U.S.C. 300gg-21, an employee welfare benefit plan and that is
21 established or maintained by a partnership, to the extent that
22 the plan, fund, or program provides medical care, including items
23 and services paid for as medical care, to present or former
24 partners in the partnership, or to their dependents, as defined
25 under the terms of the plan, fund, or program, directly or
26 through insurance, reimbursement or otherwise, shall be treated,
27 subject to subparagraph (ii), as an employee welfare benefit plan

1 that is a group health plan.

2 (ii) The term "employer" also includes the partnership in
3 relation to any partner.

4 (iii) The term "participant" also includes an individual who
5 is, or may become, eligible to receive a benefit under the plan,
6 or the individual's beneficiary who is, or may become, eligible
7 to receive a benefit under the plan. For a group health plan
8 maintained by a partnership, the individual is a partner in
9 relation to the partnership and for a group health plan
10 maintained by a self-employed individual, under which 1 or more
11 employees are participants, the individual is the self-employed
12 individual.

13 (i) "Health benefit plan" or "plan" means an expense-incurred
14 hospital, medical, or surgical policy or certificate, nonprofit
15 health care corporation certificate, or health maintenance
16 organization contract. Health benefit plan does not include
17 accident-only, credit, dental, or disability income insurance;
18 coverage issued as a supplement to liability insurance; worker's
19 compensation or similar insurance; or automobile medical-payment
20 insurance.

21 (j) "Index rate" means the arithmetic average of the premium
22 rates in each health benefit plan available in a geographic area
23 during a rating period for each small employer carrier.

24 (k) "Nonprofit health care corporation" means a nonprofit
25 health care corporation operating pursuant to the nonprofit
26 health care corporation reform act, 1980 PA 350, MCL 550.1101 to
27 550.1704.

1 (l) "Premium" means all money paid by a small employer, a
2 sole proprietor, eligible employees, or eligible persons as a
3 condition of receiving coverage from a small employer carrier,
4 including any fees or other contributions associated with the
5 health benefit plan.

6 (m) "Rating period" means the calendar period for which
7 premium rates established by a small employer carrier are assumed
8 to be in effect, as determined by the small employer carrier.

9 (n) "Small employer" means any person, firm, corporation,
10 partnership, limited liability company, or association actively
11 engaged in business who, on at least 50% of its working days
12 during the preceding calendar year, employed at least 2 but not
13 more than 50 eligible employees. In determining the number of
14 eligible employees, companies that are affiliated companies or
15 that are eligible to file a combined tax return for state
16 taxation purposes shall be considered 1 employer.

17 (o) "Small employer carrier" means either of the following:

18 (i) A carrier that offers health benefit plans covering the
19 employees of a small employer.

20 (ii) A carrier under section 3703(3).

21 (p) "Sole proprietor" means an individual who is a sole
22 proprietor or sole shareholder in a trade or business through
23 which he or she earns at least 50% of his or her taxable income
24 and for which he or she has filed the appropriate internal
25 revenue service form 1040, schedule C or F, for the previous
26 taxable year; who is a resident of this state; and who is
27 actively employed in the operation of the business, working at

1 least 30 hours per week in at least 40 weeks out of the calendar
2 year.

3 (q) "Waiting period" means, with respect to a health benefit
4 plan and an individual who is a potential enrollee in the plan,
5 the period that must pass with respect to the individual before
6 the individual is eligible to be covered for benefits under the
7 terms of the plan. For purposes of calculating periods of
8 creditable coverage pursuant to section 3707, a waiting period
9 shall not be considered a gap in coverage.

10 Sec. 3703. (1) Except as provided in subsection (2), this
11 chapter applies to any health benefit plan that provides coverage
12 to 2 or more employees of a small employer.

13 (2) This chapter does not apply to individual health
14 insurance policies that are subject to policy form and premium
15 rate approval by the commissioner.

16 Sec. 3705. (1) For adjusting rates for health benefit plans
17 subject to this chapter, a carrier may establish up to 10
18 geographic areas in this state. A nonprofit health care
19 corporation shall establish geographic areas that cover all
20 counties in this state.

21 (2) Premium rates for a health benefit plan under this
22 chapter are subject to rate and form filing with the
23 commissioner.

24 (3) Beginning 1 year after the effective date of this
25 chapter, if a small employer had been self-insured for health
26 benefits immediately preceding application for a health benefit
27 plan subject to this chapter, a carrier may charge an additional

1 premium of up to 50% above the premium rate filed under
2 subsection (2) for no more than 2 years.

3 (4) Except as provided in subsection (5), a carrier shall not
4 apply characteristics to an individual in a small employer group
5 that would result in 1 or more employees being charged a higher
6 premium than another employee.

7 (5) Health benefit plan options, number of family members,
8 and medicare eligibility may be used in establishing a small
9 employer's or sole proprietor's premium.

10 (6) A small employer carrier shall apply all rating factors
11 consistently with respect to all small employers and sole
12 proprietors in a geographic area and shall bill a small employer
13 group only with a composite rate.

14 Sec. 3706. (1) A small employer carrier may apply an open
15 enrollment period for sole proprietors. If a small employer
16 carrier applies an open enrollment period for sole proprietors,
17 the open enrollment period shall be offered at least annually and
18 shall be at least 1 month long.

19 (2) A small employer carrier is not required to offer or
20 provide to a sole proprietor all health benefit plans available
21 to small employers who are not sole proprietors.

22 (3) A small employer carrier may exclude or limit coverage
23 for a sole proprietor for a condition only if the exclusion or
24 limitation relates to a condition for which medical advice,
25 diagnosis, care, or treatment was recommended or received within
26 6 months before enrollment and the exclusion or limitation does
27 not extend for more than 6 months after the effective date of the

1 health benefit plan.

2 (4) A small employer carrier shall not impose a preexisting
3 condition exclusion for a sole proprietor that relates to
4 pregnancy as a preexisting condition or with regard to a child
5 who is covered under any creditable coverage within 30 days of
6 birth, adoption, or placement for adoption, provided that the
7 child does not experience a significant break in coverage and
8 provided that the child was adopted or placed for adoption before
9 attaining 18 years of age. A period of creditable coverage under
10 this subsection shall not be counted for enrollment of an
11 individual under a health benefit plan if, after this period and
12 before the enrollment date, there was a 90-day period during all
13 of which the individual was not covered under any creditable
14 coverage.

15 Sec. 3707. (1) As a condition of transacting business in
16 this state with small employers, every small employer carrier
17 shall actively offer to small employers all health benefit plans
18 it actively markets to small employers in this state. A small
19 employer carrier shall be considered to be actively marketing a
20 health benefit plan if it offers that plan to a small employer
21 not currently receiving a health benefit plan from that small
22 employer carrier. A small employer carrier shall issue any
23 health benefit plan to any small employer that applies for the
24 plan and agrees to make the required premium payments and to
25 satisfy the other reasonable provisions of the health benefit
26 plan not inconsistent with this chapter. A small employer
27 carrier shall not offer or sell to small employers a health

1 benefit plan that excludes or limits coverage for a preexisting
2 condition.

3 (2) If applied uniformly to all employees of the small
4 employer and without regard to any health-status-related factor,
5 a small employer carrier may impose for health benefit plans
6 offered to all small employers an affiliation period that does
7 not exceed 60 days for new entrants and does not exceed 90 days
8 for late enrollees and for which the carrier charges no premiums
9 and the coverage issued is not effective.

10 (3) A small employer carrier shall not offer or sell to small
11 employers a health benefit plan that contains a waiting period
12 applicable to new enrollees or late enrollees.

13 Sec. 3708. (1) A health benefit plan offered to a small
14 employer by a small employer carrier shall provide for the
15 acceptance of late enrollees subject to this chapter.

16 (2) A small employer carrier shall permit an employee or a
17 dependent of the employee, who is eligible, but not enrolled, to
18 enroll for coverage under the terms of the small employer health
19 benefit plan during a special enrollment period if all of the
20 following apply:

21 (a) The employee or dependent was covered under a group
22 health plan or had coverage under a health benefit plan at the
23 time coverage was previously offered to the employee or
24 dependent.

25 (b) The employee stated in writing at the time coverage was
26 previously offered that coverage under a group health plan or
27 other health benefit plan was the reason for declining

1 enrollment, but only if the small employer or carrier, if
2 applicable, required such a statement at the time coverage was
3 previously offered and provided notice to the employee of the
4 requirement and the consequences of the requirement at that
5 time.

6 (c) The employee's or dependent's coverage described in
7 subdivision (a) was either under a COBRA continuation provision
8 and that coverage has been exhausted or was not under a COBRA
9 continuation provision and that other coverage has been
10 terminated as a result of loss of eligibility for coverage,
11 including because of a legal separation, divorce, death,
12 termination of employment, or reduction in the number of hours of
13 employment or employer contributions toward that other coverage
14 have been terminated. In either case, under the terms of the
15 health benefit plan, the employee must request enrollment not
16 later than 30 days after the date of exhaustion of coverage or
17 termination of coverage or employer contribution. If an employee
18 requests enrollment pursuant to this subdivision, the enrollment
19 is effective not later than the first day of the first calendar
20 month beginning after the date the completed request for
21 enrollment is received.

22 (3) A small employer carrier that makes dependent coverage
23 available under a health benefit plan shall provide for a
24 dependent special enrollment period during which the person may
25 be enrolled under the health benefit plan as a dependent of the
26 individual or, if not otherwise enrolled, the individual may be
27 enrolled under the health benefit plan. For a birth or adoption

1 of a child, the spouse of the individual may be enrolled as a
2 dependent of the individual if the spouse is otherwise eligible
3 for coverage. This subsection applies only if both of the
4 following occur:

5 (a) The individual is a participant under the health benefit
6 plan or has met any affiliation period applicable to becoming a
7 participant under the plan and is eligible to be enrolled under
8 the plan, but for a failure to enroll during a previous
9 enrollment period.

10 (b) The person becomes a dependent of the individual through
11 marriage, birth, or adoption or placement for adoption.

12 (4) The dependent special enrollment period under subsection
13 (3) for individuals shall be a period of not less than 30 days
14 and begins on the later of the date dependent coverage is made
15 available or the date of the marriage, birth, or adoption or
16 placement for adoption. If an individual seeks to enroll a
17 dependent during the first 30 days of the dependent special
18 enrollment period under subsection (3), the coverage of the
19 dependent shall be effective as follows:

20 (a) For marriage, not later than the first day of the first
21 month beginning after the date the completed request for
22 enrollment is received.

23 (b) For a dependent's birth, as of the date of birth.

24 (c) For a dependent's adoption or placement for adoption, the
25 date of the adoption or placement for adoption.

26 Sec. 3709. (1) Except as provided in this section,
27 requirements used by a small employer carrier in determining

1 whether to provide coverage to a small employer shall be applied
2 uniformly among all small employers applying for coverage or
3 receiving coverage from the small employer carrier.

4 (2) A small employer carrier may deny coverage to a small
5 employer if the small employer fails to enroll enough of its
6 employees to meet the minimum participation rules established by
7 the carrier pursuant to sound underwriting requirements.

8 Sec. 3711. (1) Except as provided in this section, a small
9 employer carrier that offers health coverage in the small
10 employer group market in connection with a health benefit plan
11 shall renew or continue in force that plan at the option of the
12 small employer or sole proprietor.

13 (2) Guaranteed renewal is not required in cases of: fraud or
14 intentional misrepresentation of the small employer or, for
15 coverage of an insured individual, fraud or misrepresentation by
16 the insured individual or the individual's representative; lack
17 of payment; if the small employer carrier no longer offers that
18 particular type of coverage in the market; or if the sole
19 proprietor or small employer moves outside the geographic area.

20 Sec. 3712. (1) If a small employer carrier decides to
21 discontinue offering all health benefit plans in a geographic
22 area, all of the following apply:

23 (a) The small employer carrier shall provide notice to the
24 commissioner and to each small employer covered by the small
25 employer carrier in the geographic area of the discontinuation at
26 least 180 days prior to the date of the discontinuation of the
27 coverage.

1 (b) All health benefit plans issued or delivered for issuance
2 in the geographic area are discontinued and all current health
3 benefit plans in the geographic area are not renewed.

4 (c) The small employer carrier shall not provide for the
5 issuance of any health coverage in the geographic area for a
6 5-year period beginning on the date of the discontinuation of the
7 last health coverage not renewed under this subsection.

8 (d) The small employer carrier shall not provide for the
9 issuance of any health coverage in an area that was not a
10 geographic area of the small employer carrier on the date of the
11 discontinuation of the last health coverage not renewed under
12 this subsection for a 5-year period beginning on the date of
13 discontinuation of the last health coverage not renewed under
14 this subsection.

15 (2) A nonprofit health care corporation shall not cease to
16 renew all health benefit plans in a geographic area.

17 Sec. 3713. Each small employer carrier shall provide all of
18 the following to a small employer upon request and upon entering
19 into a contract with the small employer:

20 (a) The extent to which premium rates for a specific small
21 employer are established or adjusted due to characteristics of
22 the employees of a small employer and the employer, if covered.

23 (b) The provisions concerning the carrier's right to change
24 premium rates and the characteristics of the employees of a small
25 employer and the employer, if covered.

26 (c) The provisions relating to renewability of coverage.

27 Sec. 3715. (1) Each small employer carrier shall maintain

1 at its principal place of business a complete and detailed
2 description of its rating practices and renewal underwriting
3 practices, including information and documentation that
4 demonstrate that its rating methods and practices are based upon
5 commonly accepted actuarial assumptions and are in accordance
6 with sound actuarial principles.

7 (2) Each small employer carrier shall file each March 1 with
8 the commissioner an actuarial certification that the carrier is
9 in compliance with this section and that the rating methods of
10 the carrier are actuarially sound. A copy of the actuarial
11 certification shall be retained by the carrier at its principal
12 place of business.

13 (3) A small employer carrier shall make the information and
14 documentation described in subsection (1) available to the
15 commissioner upon request.

16 Sec. 3717. The commissioner may suspend all or any part of
17 section 3705 as to the premium rates applicable to 1 or more
18 small employers for 1 or more rating periods upon a filing by the
19 small employer carrier and a finding by the commissioner that
20 either the suspension is reasonable in light of the financial
21 condition of the carrier or that the suspension would enhance the
22 efficiency and fairness of the marketplace for small employer
23 health insurance.

24 Sec. 3721. (1) By June 1, 2006 and by each June 1 after
25 2006, the commissioner shall make a determination as to whether a
26 reasonable degree of competition in the small employer carrier
27 health market exists on a statewide basis. If the commissioner

1 determines that a reasonable degree of competition in the small
2 employer carrier health market does not exist on a statewide
3 basis, the commissioner shall hold a public hearing and shall
4 issue a report delineating specific classifications and kinds or
5 types of insurance, if any, where competition does not exist and
6 any suggested statutory or other changes necessary to increase or
7 encourage competition. The report shall be based on relevant
8 economic tests, including, but not limited to, those in
9 subsection (3). The findings in the report shall not be based on
10 any single measure of competition, but appropriate weight shall
11 be given to all measures of competition.

12 (2) If the results of the report issued under subsection (1)
13 are disputed or if the commissioner determines that circumstances
14 that the report was based on have changed, the commissioner shall
15 issue a supplemental report to the report under subsection (1)
16 that includes a certification of whether or not a reasonable
17 degree of competition exists in the small employer carrier health
18 market. The supplemental report and certification shall be
19 issued not later than December 15 immediately following the
20 release of the report under subsection (1) that this report
21 supplements and shall be supported by substantial evidence.

22 (3) All of the following shall be considered by the
23 commissioner for purposes of subsections (1) and (2):

24 (a) The extent to which any carrier controls all or a
25 portion of the small employer carrier health market.

26 (b) Whether the total number of small employer carriers
27 writing small employer carrier health coverage in this state is

1 sufficient to provide multiple options to employers.

2 (c) The disparity among small employer carrier rates and
3 classifications to the extent that those classifications result
4 in rate differentials.

5 (d) The availability of small employer carrier health
6 coverage to employers in all geographic areas and all types of
7 business.

8 (e) The residual market share.

9 (f) The overall rate level that is not excessive,
10 inadequate, or unfairly discriminatory.

11 (g) Any other factors the commissioner considers relevant.

12 (4) The reports and certifications required under
13 subsections (1) and (2) shall be forwarded to the governor, the
14 clerk of the house, the secretary of the senate, and all the
15 members of the senate and house of representatives standing
16 committees on insurance and health issues.

17 Enacting section 1. This amendatory act does not take
18 effect unless House Bill No. 4279 of the 92nd Legislature is
19 enacted into law.