

HOUSE BILL No. 5438

January 27, 2004, Introduced by Reps. Zelenko, Stahl, Vander Veen, Taub, Woronchak, Julian, Wojno, Shaffer, Amos, Steil, Mortimer, Howell, Voorhees, Middaugh, Plakas, Kooiman, Robertson, Dennis, Pappageorge, Minore, Richardville, Farhat, Hummel, Ehardt, Pumford, LaSata, Hager, Garfield, Caul, Stakoe, Woodward, DeRossett, Ruth Johnson, Palmer, Shackleton, Meyer, Koetje, Stewart, Caswell, Nitz, Milosch, Tabor, Nofs, Gaffney, Ward, Hune, Van Regenmorter, Vagnozzi, Spade, O'Neil, Jamnick, Murphy, Moolenaar, Huizenga, Walker and Palsrok and referred to the Committee on Health Policy.

A bill to amend 1984 PA 233, entitled
 "Prudent purchaser act,"
 by amending section 2 (MCL 550.52) and by adding sections 3c, 3d,
 3e, 3f, and 3g.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Commissioner" means the commissioner of insurance.

3 (b) "Dental care corporation" means a dental care
 4 corporation 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 1963 PA 125, MCL 550.351 to 550.373.~~

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

1 ~~Laws~~ 1980 PA 350, MCL 550.1101 to 550.1704.

2 (d) "Health care provider" means a health facility or a
3 person licensed, certified, or registered under parts 61 to 65 or
4 161 to 182 of the public health code, ~~Act No. 368 of the Public~~
5 ~~Acts of 1978, being sections 333.6101 to 333.6523 and 333.16101~~
6 ~~to 333.18237 of the Michigan Compiled Laws~~ 1978 PA 368, MCL
7 333.6101 to 333.6523 and 333.16101 to 333.18237. ~~However,~~
8 ~~health care provider does not include a pharmacist or pharmacy~~
9 ~~engaged in the retail sale of drugs, until January 1, 1987.~~

10 (e) "Health facility" means:

11 (i) A **health** facility or agency licensed or authorized under
12 parts 201 to 217 of the public health code, ~~or a licensed part~~
13 ~~thereof, except a facility or agency licensed under part 203 of~~
14 ~~the public health code~~ 1978 PA 368, MCL 333.20101 to
15 333.21799e.

16 (ii) A mental hospital, psychiatric hospital, psychiatric
17 unit, or mental retardation facility operated by the department
18 of ~~mental~~ **community** health or certified or licensed under ~~Act~~
19 ~~No. 258 of the Public Acts of 1974, being sections 330.1001 to~~
20 ~~330.2106 of the Michigan Compiled Laws~~ **the mental health code,**
21 1974 PA 258, MCL 330.1001 to 330.2106.

22 (iii) A facility providing outpatient physical therapy
23 services, including speech pathology services.

24 (iv) A kidney disease treatment center, including a
25 freestanding hemodialysis unit.

26 (v) An organized ambulatory health care facility.

27 (vi) A tertiary health care service facility.

1 (vii) A substance abuse treatment program licensed under
2 parts 61 to 65 of the public health code, ~~Act No. 368 of the~~
3 ~~Public Acts of 1978, being sections 333.6101 to 333.6523 of the~~
4 ~~Michigan Compiled Laws— 1978 PA 368, MCL 333.6101 to 333.6523.~~

5 (viii) An outpatient psychiatric clinic.

6 (ix) A home health agency.

7 (f) "Health maintenance organization" means a health
8 maintenance organization ~~licensed under article 17 of the public~~
9 ~~health code, Act No. 368 of the Public Acts of 1978, being~~
10 ~~sections 333.20101 to 333.22181 of the Michigan Compiled Laws~~
11 **operating pursuant to chapter 35 of the insurance code of 1956,**
12 **1956 PA 218, MCL 500.3501 to 500.3580.**

13 ~~(g) "Hospital service corporation" means a hospital service~~
14 ~~corporation incorporated under Act No. 109 of the Public Acts of~~
15 ~~1939, being sections 550.501 to 550.517 of the Michigan Compiled~~
16 ~~Laws.~~

17 **(g) —(h)—** "Insurer" means an insurer as defined in section
18 106 of the insurance code of 1956, ~~Act No. 218 of the Public~~
19 ~~Acts of 1956, being section 500.106 of the Michigan Compiled~~
20 ~~Laws— 1956 PA 218, MCL 500.106.~~

21 ~~(i) "Medical care corporation" means a medical care~~
22 ~~corporation incorporated under Act No. 108 of the Public Acts of~~
23 ~~1939, being sections 550.301 to 550.316 of the Michigan Compiled~~
24 ~~Laws.~~

25 **(h) —(j)—** "Organization" means an insurer, a dental care
26 corporation, ~~hospital service corporation, medical care~~
27 ~~corporation,~~ **health care corporation, pharmacy benefit manager,**

1 or third party administrator.

2 (i) "Pharmacy benefit manager" means a pharmacy benefit
3 manager operating under a certificate of authority issued by the
4 commissioner pursuant to chapter 37 of the insurance code of
5 1956, 1956 PA 218, MCL 500.3701 to 500.3725.

6 (j) ~~(k)~~ "Provider panel" means a panel **or network** of
7 health care providers providing health care services pursuant to
8 a prudent purchaser agreement.

9 (k) ~~(l)~~ "Prudent purchaser agreement" means an agreement
10 between an organization and a health care provider pursuant to
11 section 3.

12 (l) ~~(m)~~ "Third party administrator" means an administrator
13 operating under a certificate of authority issued by the
14 commissioner pursuant to the third party administrator act, 1984
15 PA 218, MCL 550.901 to 550.960.

16 Sec. 3c. (1) An organization that establishes a provider
17 panel of pharmacy providers shall do all of the following:

18 (a) Reimburse all pharmacy providers in the panel under the
19 same terms for the same strength, quantity, and days' supply of
20 the same covered prescription drugs, including performance-based
21 incentives that include movement of market share or generic
22 substitution or other actions that result because of an action
23 taken by a pharmacy provider.

24 (b) Apply the same pricing rules relative to package size
25 and national drug code to all pharmacy providers in the panel.

26 (c) Apply the same dispensing or other service reimbursement
27 fees and terms to all pharmacy providers in the panel.

1 (d) Apply the same co-pay and payment terms regardless of
2 which pharmacy provider in the panel dispenses the prescription.

3 (e) Provide all pharmacy providers in the panel with equal
4 access to patient profiles maintained by that organization.

5 (f) Maintain the right of a patient to receive a 30-day
6 supply of medication, at the same co-pay as mail order or
7 internet, if a prescription fails to be received for whatever
8 reason by a patient on a timely basis.

9 (2) An organization that establishes a provider panel of
10 pharmacy providers shall not do any of the following:

11 (a) Set a limit on the quantity of drugs or days' supply of
12 drugs that will be reimbursed, unless the limit is applied
13 uniformly to all pharmacy providers in the panel.

14 (b) Require pharmacy providers to agree to participate in
15 any other network, contract, or arrangement for pharmacy benefit
16 services as a condition for participation in any other network,
17 contract, or arrangement for the provision of pharmacy benefit
18 services.

19 (c) Amend, revise, add, remove, or modify any material
20 terms, provisions, or conditions of any contract with a pharmacy
21 provider, and any accompanying pharmacy service manuals or
22 documents, during the term of the pharmacy provider contract
23 without the express written consent and agreement of the pharmacy
24 provider.

25 (d) Withhold, recoup, or attempt to recoup any funds due to
26 a pharmacy provider from an audit through a setoff against future
27 sums due and owing to a pharmacy provider.

1 (e) Retroactively reverse, deny acknowledgment of
2 participant eligibility, or deny or adjust payments of
3 adjudicated, accepted for pharmacy claims in more than a
4 reasonable amount of time after adjudication, except where the
5 organization provides evidence that the pharmacy provider
6 received duplicate payment, the pharmacy did not provide the
7 prescription services, or the claim is fraudulent.

8 (f) Use patient data, including data derived or gained from
9 a pharmacy provider, to market or sell services in competition
10 with any pharmacy provider on the panel.

11 Sec. 3d. A pharmacy provider on a provider panel under this
12 act that provides prescription drugs or devices for residents of
13 this state shall comply with part 177 of the public health code,
14 1978 PA 368, MCL 333.17701 to 333.17770.

15 Sec. 3e. (1) An organization that establishes a provider
16 panel of pharmacy providers shall disclose in writing annually on
17 or before March 1 to the commissioner and to all purchasers of
18 its coverage all of the following:

19 (a) Any ownership in or economic relationship other than a
20 network provider relationship with any pharmacy or provider of
21 prescription drugs or devices.

22 (b) Any ownership in or economic relationship other than a
23 formulary or rebate arrangement with any pharmaceutical
24 manufacturer or distributor.

25 (c) Any agreement or practice by the organization to bill a
26 benefit plan for prescription drugs, including dispensing fees,
27 at amounts higher than the organization pays the pharmacy.

1 (d) Any agreement to share revenue, other than through a
2 provider agreement, with a mail-order or internet pharmacy
3 company.

4 (e) Any agreement to sell prescription drug data, including
5 data as to the prescribing practices of individual health care
6 providers in the state.

7 (f) For agreements with pharmaceutical manufacturers that
8 involve favoring the manufacturer's products over a competitor's
9 products or placing the manufacturer's product or products on the
10 preferred drug list or formulary of the organization or of the
11 purchaser of coverage:

12 (i) The name and food and drug administration labeler code of
13 the drug manufacturer.

14 (ii) The formula or formulas for sharing all revenue
15 received, by the organization from the drug manufacturer, between
16 the organization and the purchaser of coverage.

17 (iii) Any fees or other economic considerations to the
18 organization from the drug manufacturer that are not shared with
19 or passed on to the purchaser of coverage.

20 (g) Any timing issue concerning the organization's receipt of
21 rebates or other economic considerations from the drug
22 manufacturers and the time taken to pass the rebates or other
23 economic considerations on to the purchaser of coverage.

24 (2) An organization that establishes a provider panel of
25 pharmacy providers shall disclose, if applicable, its ownership
26 interest in a mail-order or internet pharmacy to a purchaser of
27 its coverage and to persons who have coverage authorized by this

1 act.

2 (3) An organization that establishes a provider panel of
3 pharmacy providers shall disclose to a purchaser of its coverage
4 its databank source and prices used in its pricing calculations.
5 This shall include databanks and prices that are not published by
6 third parties, including, but not limited to, Medispan or First
7 Data.

8 Sec. 3f. A pharmacy's or pharmacist's affiliation or
9 participation in a panel shall not be terminated because of
10 efforts by the pharmacy or pharmacist to invoke his or her rights
11 under the prudent purchaser agreement.

12 Sec. 3g. An organization that establishes a provider panel
13 of pharmacy providers shall electronically notify pharmacy
14 providers on the panel of any additions or deletions of
15 purchasers of coverage or covered lines or of changes in benefit
16 design within 30 days of the addition, deletion, or change.

17 Enacting section 1. This amendatory act does not take effect
18 unless all of the following bills of the 92nd Legislature are
19 enacted into law:

20 (a) Senate Bill No. _____ or House Bill No. 5437 (request
21 no. 04345'03*).

22 (b) Senate Bill No. _____ or House Bill No. 5436 (request
23 no. 05814'03).

24 (c) Senate Bill No. _____ or House Bill No. 5435 (request
25 no. 05887'03).

26 (d) House Bill No. 4987.