THE HEALTH BENEFIT AGENT ACT
Act 252 of 1986

AN ACT to regulate the marketing and transacting of certain health benefits; to regulate the agents of health benefit corporations; to establish certain powers and duties of health benefit corporations and agents of health benefit corporations; to establish the powers and duties of certain state officers and agencies; and to provide for certain penalties.

History: 1986, Act 252, Eff. Mar. 31, 1987.

Compiler's note: For transfer of the Department of Insurance and Office of the Commissioner on Insurance from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

550.1001 Short title.

Sec. 1. This act shall be known and may be cited as "the health benefit agent act".

History: 1986, Act 252, Eff. Mar. 31, 1987.

Compiler's note: For transfer of the Department of Insurance and Office of the Commissioner on Insurance from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

550.1002 Definitions.

Sec. 2. As used in this act:

(a) "Affiliate" means that term as defined in section 1301 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.1301 of the Michigan Compiled Laws.

(b) "Commissioner" means the commissioner of insurance.

(c) "Control" means that term as defined in section 1301 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.1301 of the Michigan Compiled Laws.

(d) "Health benefit" means any benefit or service lawfully provided by a health benefit corporation.

(e) "Health benefit agent" means a person who meets all of the following criteria:

(*i*) Is a licensed accident and health insurance agent under chapter 12 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.1201 to 500.1244 of the Michigan Compiled Laws.

(*ii*) Is authorized in writing by a health benefit corporation to act as an agent for the health benefit corporation and a copy of the authorization is filed with the commissioner.

(f) "Health benefit corporation" means:

(*i*) A health care corporation organized under Act No. 350 of the Public Acts of 1980, being sections 550.1101 to 550.1704 of the Michigan Compiled Laws.

(*ii*) A nonprofit dental care corporation organized under Act No. 125 of the Public Acts of 1963, being sections 550.351 to 550.373 of the Michigan Compiled Laws.

(*iii*) A health maintenance organization licensed under part 210 of Act No. 368 of the Public Acts of 1978, being sections 333.21001 to 333.21098 of the Michigan Compiled Laws.

(g) "Influence" means to manage, direct, mandate, or give a reward or benefit to a person. Influence does not mean to respond to a request for information.

(h) "Package" means to sell health benefits simultaneously or in conjunction with the sale of insurance.

(i) "Subscriber" means a person who enters into a contract, or on whose behalf a contract is entered into, with a health benefit corporation for the provision of health benefits.

History: 1986, Act 252, Eff. Mar. 31, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

550.1003 Persons authorized to sell health benefits; packaging health benefits with insurance; notify agent of record; annual appointment fee; "agent of record" defined.

Sec. 3. (1) Health benefits may only be sold on behalf of a health benefit corporation by a health benefit agent.

(2) A health benefit agent may package health benefits with insurance the agent is authorized to sell. If an application for health benefits that is packaged with insurance is submitted by an agent to a health benefit

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corporation or to an affiliate of a health benefit corporation and the health benefit corporation or the affiliate of a health benefit corporation knows the agent of record for the group's current health benefits, the health benefit corporation or the affiliate of a health benefit corporation shall notify the agent of record of the application unless any of the following apply:

(a) The submitting agent is the agent of record.

(b) Both of the following apply:

(*i*) The group authorizes changing the agent of record to the submitting agent.

(*ii*) The agent of record is not employed by a health benefit corporation or an affiliate of a health benefit corporation.

(c) The group requests in writing that the agent of record not be notified.

(3) If the health benefit corporation or the affiliate of a health benefit corporation notifies the agent of record under subsection (2), the health benefit corporation or the affiliate of a health benefit corporation shall not process the application for 14 days after the notification is given unless either of the following applies:

(a) A shorter period of time is agreed to by the agent of record.

(b) The health benefit corporation or the affiliate of a health benefit corporation receives a written request from the group to proceed with consideration of the application.

(4) A health benefit corporation shall pay to the director of the department of insurance and financial services an annual appointment fee of $5.00 for each health benefit agent who is authorized to sell health benefits on behalf of the health benefit corporation.

(5) As used in this section, "agent of record" means a person that is a health benefit agent authorized to represent a subscriber to transact insurance, including the purchasing, servicing, and maintenance of health benefits and that is shown on the records of the health benefit corporation or the affiliate of a health benefit corporation as the agent to whom commission is to be paid.

History: 1986, Act 252, Eff. Mar. 31, 1987;—Am. 2018, Act 430, Imd. Eff. Dec. 20, 2018.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

550.1004 Influencing agent prohibited.

Sec. 4. A health benefit corporation shall not attempt in any way to influence an agent in the packaging of health benefits.

History: 1986, Act 252, Eff. Mar. 31, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

550.1004a Applicability of certain statutory provisions.

Sec. 4a. (1) The provisions of sections 1, 2, 3, 4(1), (2), (3), (4), (6), 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 of Act No. 274 of the Public Acts of 1984, as amended, being sections 445.771 to 445.788 of the Michigan Compiled Laws, shall apply to all activities authorized by this act.

(2) The provisions of this act shall apply to an activity of a health benefit corporation notwithstanding the provisions of section 4(5) of Act No. 274 of the Public Acts of 1984, as amended, being section 445.774 of the Michigan Compiled Laws, except where the activity is specifically required by this act or any regulation or orders promulgated by the commissioner pursuant to this act.

History: 1986, Act 252, Eff. Mar. 31, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

550.1005 Compensation of health benefit agents.

Sec. 5. Health benefit corporations shall compensate health benefit agents primarily on a reasonable commission basis. Health benefit corporations may provide reasonable bonuses or other reasonable compensation to health benefits agents for the sale of health benefits.

History: 1986, Act 252, Eff. Mar. 31, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

550.1006 Authorized agents; requirements, duties, and restrictions; powers of

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commissioner.

Sec. 6. (1) Agents licensed under chapter 12 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, to sell accident and health insurance are deemed to be health benefits agents under this act upon being authorized by a health benefit corporation and filing that authorization with the commissioner.

(2) The requirements, duties, and restrictions of insurance agents and the powers of the commissioner with respect thereto under chapter 20 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.2001 to 500.2093 of the Michigan Compiled Laws, shall also apply to agents licensed under this act when marketing and selling health benefits to the same extent as if marketing and selling disability insurance.

History: 1986, Act 252, Eff. Mar. 31, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

550.1008 Contracts or other arrangements for packaging of health benefits with insurance; policy supplementing health benefits of health maintenance organization.

Sec. 8. (1) Except as otherwise provided in this act, a health care corporation organized under Act No. 350 of the Public Acts of 1980, being sections 550.1101 to 550.1704 of the Michigan Compiled Laws, shall not, either itself or through any affiliate or agent, enter into a contract or other arrangement with any insurer or other person which provides for the packaging of health benefits with insurance.

(2) A health benefit corporation may arrange for excess loss insurance in conjunction with the sale of administrative services benefits.

(3) A health maintenance organization licensed under part 210 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.21001 to 333.21098 of the Michigan Compiled Laws, may arrange with an insurer for the insurer to sell a policy to supplement the health benefits of the health maintenance organization.

History: 1986, Act 252, Eff. Mar. 31, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

550.1009 Licensing affiliate of health benefit corporation as insurance agent prohibited.

Sec. 9. An affiliate of a health benefit corporation must not be licensed as an insurance agent under chapter 12 of the insurance code of 1956, 1956 PA 218, MCL 500.1201 to 500.1247.

History: 1986, Act 252, Eff. Mar. 31, 1987;—Am. 2018, Act 430, Imd. Eff. Dec. 20, 2018.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

550.1010 Health benefit agent as fiduciary; evidence of violation of fiduciary responsibility; use of reasonable accounting methods; records required; examination of records; prohibited conduct.

Sec. 10. (1) A health benefit agent shall be a fiduciary for all money received or held by him or her in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility.

(2) An agent shall use reasonable accounting methods to record funds received in his or her fiduciary capacity including the receipt and distribution of all premiums due each of his or her health benefit corporations. An agent shall record return premiums received by or credited to him or her which are due a subscriber on certificates reduced or canceled or which are due a prospective purchaser of health benefits as a result of a rejected or declined application. Records required by this section shall be open to examination by the commissioner.

(3) An agent shall not reward or remunerate any person for procuring or inducing business in this state, furnishing leads or prospects, or acting in any other manner as an agent.

(4) A person may not sell or attempt to sell health benefits by means of intimidation or threats, whether express or implied. Except as otherwise provided by law, a person may not induce the purchase of health benefits through a particular agent or from a particular health benefit corporation by means of a promise to sell goods, to lend money, to provide services, or by a threat to refuse to sell goods, to refuse to lend money, or to refuse to provide services.

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History: 1986, Act 252, Eff. Mar. 31, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

550.1012 Notice of termination of agent's authority; liability; duration of agent's responsibility; cancellation or refusal to renew certificate of subscriber; certain referrals or communications prohibited; records, names of subscribers, and expiration dates of certificates and contracts as property of agent; copies of written communications between health benefit corporations and subscribers; grounds for cancellation of agent's contract or termination of agent's authority; authorizing licensed accident and health insurance agent to sell health benefits.

Sec. 12. (1) A health benefit corporation shall give to the commissioner and the agent immediate written notice of the termination of an agent's authority to represent the health benefit corporation. The notice shall include the full disclosure, with supporting evidence, of acts or omissions by the agent which reasonably may be construed to be a violation of this act, or of any other statute, and acts or omissions which may reflect on the agent's qualifications as an agent or which may adversely affect the public interest. There shall not be liability on the part of, and a cause of action of any nature shall not arise against, the commissioner, a health benefit corporation, or an authorized representative of either for any statement made or evidence provided pursuant to this section.

(2) When an agent's authority to represent a health benefit corporation is terminated, the responsibility of an agent shall continue until the existing certificates of health benefits are canceled, replaced, or have expired. During the period following notice of termination, the agent shall continue to represent the health benefit corporation in servicing existing certificates, but the agent shall not bind a new risk, renew a certificate, nor increase the obligation of the health benefit corporation under the certificate without the approval of the health benefit corporation. A health benefit corporation shall not cancel or refuse to renew the certificate of a subscriber because of the termination of an agent's contract.

(3) A health benefit corporation's records and knowledge of names of subscribers and the expiration dates of certificates and contracts of subscribers who have purchased health benefits from an agent of the health benefit corporation shall not be referred nor communicated by the health benefit corporation to any other agent or person nor used by the health benefit corporation for the purpose of solicitation, unless the agent's authorization has been terminated pursuant to subsection (6)(a), (b), or (c).

(4) If the authorization of an agent authorized to sell health benefits on behalf of a health benefit corporation is terminated, the agent's records, use, and control of the names of subscribers and the expiration dates of certificates and contracts of subscribers who have purchased health benefits from the agent shall remain the property of the agent and be left to his or her undisputed possession, unless the agent's authority is terminated pursuant to subsection (6)(a), (b), or (c).

(5) A copy of any written communication between a health benefit corporation and a subscriber shall be sent to the health benefit agent who sold the health benefits to the subscriber unless either of the following apply:

(a) The information is confidential under section 604 of the nonprofit health care corporation reform act, Act No. 350 of the Public Acts of 1980, being section 550.1604 of the Michigan Compiled Laws.

(b) The health benefit corporation and the health benefit agent otherwise agree.

(6) A health care corporation regulated under the nonprofit health care corporation reform act, Act No. 350 of the Public Acts of 1980, being sections 550.1101 to 550.1754 of the Michigan Compiled Laws shall not cancel an agent's contract or otherwise terminate an agent's authority to represent the health benefit corporation, except for 1 or more of the following reasons:

(a) Malfeasance.

(b) Breach of fiduciary duty or trust.

(c) A violation of this act.

(d) Failure to perform as provided by the contract between the parties.

(7) Upon receipt of a request by any person licensed as an accident and health insurance agent under chapter 12 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, a health care corporation regulated under the nonprofit health care corporation reform act, Act No. 350 of the Public Acts of 1980, shall authorize in writing that licensed accident and health insurance agent to sell health benefits on behalf of the health care corporation.

History: 1986, Act 252, Eff. Mar. 31, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the

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commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

550.1014 Suspension, revocation, refusal to grant, or refusal to renew accident and health insurance license; grounds; notice; hearing; summary suspension; subpoenas.

Sec. 14. (1) The commissioner, after notice and opportunity for a hearing, may suspend or revoke the accident and health insurance license of an agent who violates any provision of this act.

(2) After notice and opportunity for a hearing, the commissioner may refuse to grant or renew an accident and health insurance license to act as an agent if he or she determines by a preponderance of the evidence, that it is probable that the business or primary occupation of the applicant will give rise to coercion, indirect rebating of commissions, or other practices in the sale of health benefits which are prohibited by law.

(3) Without prior hearing, the commissioner may order summary suspension of an accident and health insurance license if he or she finds that protection of the public requires emergency action and incorporates this finding in his or her order. The suspension shall be effective on the date specified in the order or upon service of a certified copy of the order on the licensee, whichever is later. If requested, the commissioner shall conduct a hearing on the suspension within a reasonable time but not later than 20 days after the effective date of the summary suspension unless the person whose license is suspended requests a later date. At the hearing, the commissioner shall determine if the suspension should be continued or if the suspension should be withdrawn, and, if proper notice is given, may determine if the license should be revoked. The commissioner shall announce his or her decision within 30 days after conclusion of the hearing. The suspension shall continue until the decision is announced.

(4) The commissioner, or his or her designated deputy, may issue subpoenas with the approval of a circuit court judge of the circuit court of Ingham county to require the attendance and testimony of witnesses and the production of documents necessary to the conduct of the hearing and may designate an employee of the insurance bureau to make service thereof. The subpoenas issued by the commissioner, or his or her designated deputy, may be enforced upon application by them to the circuit court of Ingham county by proceedings in contempt thereof, as provided by law.

History: 1986, Act 252, Eff. Mar. 31, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

550.1016 Violation of act; orders; penalties for violation of cease and desist order; injunction.

Sec. 16. (1) If the commissioner finds that a person has violated this act, after an opportunity for a hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, the commissioner shall reduce the findings and decision to writing and shall issue and cause to be served upon the person charged with the violation a copy of the findings and an order requiring the person to cease and desist from the violation. In addition, the commissioner may order any of the following:

(a) Payment of a civil fine of not more than $300.00 for each violation. However, if the person knew or reasonably should have known that he or she was in violation of this act, the commissioner may order the payment of a civil fine of not more than $1,500.00 for each violation. However, an order of the commissioner under this subsection shall not require the payment of civil fines exceeding $10,000.00. A fine collected under this subdivision shall be turned over to the state treasurer and credited to the general fund of the state.

(b) A refund of any overcharges.

(c) That restitution be made to the subscriber or other claimant to cover incurred losses, damages, or other harm attributable to the acts of the person which are found to be in violation of this act.

(d) The suspension or revocation of the person's license or certificate of authority.

(2) The commissioner may by order, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, an order issued under this section, if in the opinion of the commissioner conditions of fact or of law have changed to require that action, or if the public interest requires that action.

(3) If a person knowingly violates a cease and desist order under this act and has been given notice and an opportunity for a hearing held pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, the commissioner may order a civil fine of not more than $10,000.00 for each violation, or a suspension or revocation of the person's license or certificate of authority, or both. However, an order issued by the commissioner pursuant to this subsection shall not require the payment of civil fines exceeding $50,000.00. A fine collected under this subsection shall be turned over to the state treasurer and credited to the general fund of the state.

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(4) The commissioner may apply to the circuit court of Ingham county for an order of the court enjoining a violation of this act.

History: 1986, Act 252, Eff. Mar. 31, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

550.1018 Construction of act.

Sec. 18. This act shall not be construed as authorizing a health benefit corporation or affiliate of a health benefit corporation to market or transact, as defined in sections 402a and 402b of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.402a and 500.402b of the Michigan Compiled Laws, any type of insurance described in chapter 6 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.600 to 500.644 of the Michigan Compiled Laws.

History: 1986, Act 252, Eff. Mar. 31, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

550.1020 Conditional effective date.

Sec. 20. This act shall not take effect unless House Bill No. 5527 of the 83rd Legislature is enacted into law.

History: 1986, Act 252, Eff. Mar. 31, 1987.

Compiler's note: House Bill No. 5527, referred to in MCL 550.1020, was filed with the Secretary of State December 5, 1986, and became P.A. 1986, No. 253, Eff. Mar. 31, 1987.

For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

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