

# SENATE BILL 380

J4

9lr1130  
CF HB 255

---

By: **Senators Garagiola, Astle, Della, Exum, Glassman, Kelley, ~~Kittleman,~~  
Klausmeier, Middleton, Pipkin, and Pugh**

Introduced and read first time: February 2, 2009

Assigned to: Finance

---

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 25, 2009

---

## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Health Maintenance Organizations – Payments to Nonparticipating**  
3 **Providers**

4 FOR the purpose of ~~altering the rate that a health maintenance organization must pay~~  
5 ~~to certain trauma physicians for certain covered services provided to certain~~  
6 ~~enrollees of the health maintenance organization;~~ requiring health maintenance  
7 organizations to pay certain health care providers for certain evaluation and  
8 management services no less than the greater of certain rates; requiring health  
9 maintenance organizations to pay certain health care providers for certain  
10 services that are not evaluation and management services no less than the  
11 greater of certain rates; requiring a health maintenance organization to  
12 calculate a certain average rate in a certain manner; requiring the Maryland  
13 Health Care Commission to annually review certain payments and report  
14 certain findings to the Maryland Insurance Administration; authorizing the  
15 Administration to take certain actions to investigate and enforce a violation of  
16 certain provisions of this Act; requiring the Administration, in consultation with  
17 the Commission, to adopt certain regulations; defining certain terms; providing  
18 for a delayed effective date; providing for the termination of this Act; and  
19 generally relating to payments by health maintenance organizations to  
20 nonparticipating providers.

21 BY repealing and reenacting, with amendments,  
22 Article – Health – General  
23 Section 19–710.1  
24 Annotated Code of Maryland

---

### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(2005 Replacement Volume and 2008 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

**Article - Health - General**

19-710.1.

(a) (1) In this section the following words have the meanings indicated.

(2) ["Enrollee" means a subscriber or member of the health maintenance organization.

(3)] "Adjunct claims documentation" means an abstract of an enrollee's medical record which describes and summarizes the diagnosis and treatment of, and services rendered to, the enrollee, including, in the case of trauma rendered in a trauma center, an operative report, a discharge summary, a Maryland Ambulance Information Systems form, or a medical record.

**(3) "BERENSON-EGGERS TYPE OF SERVICE CODE" MEANS A CODE IN A CLASSIFICATION SYSTEM DEVELOPED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES THAT GROUPS CURRENT PROCEDURAL TERMINOLOGY CODES TOGETHER BASED ON CLINICAL CONSISTENCY.**

**(4) "ENROLLEE" MEANS A SUBSCRIBER OR MEMBER OF A HEALTH MAINTENANCE ORGANIZATION.**

**(5) "EVALUATION AND MANAGEMENT SERVICE" MEANS ANY SERVICE WITH A BERENSON-EGGERS TYPE OF SERVICE CODE IN THE CATEGORY OF EVALUATION AND MANAGEMENT.**

[(4)] **(6) "Institute" means the Maryland Institute for Emergency Medical Services Systems.**

**(7) "MEDICARE ECONOMIC INDEX" MEANS THE FIXED-WEIGHT INPUT PRICE INDEX THAT:**

**(I) MEASURES THE WEIGHTED AVERAGE ANNUAL PRICE CHANGE FOR VARIOUS INPUTS NEEDED TO PRODUCE PHYSICIAN SERVICES; AND**

**(II) IS USED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES IN THE CALCULATION OF REIMBURSEMENT OF PHYSICIAN SERVICES UNDER TITLE XVIII OF THE FEDERAL SOCIAL SECURITY ACT.**

**(8) "SIMILARLY LICENSED PROVIDER" MEANS:**

1 (I) FOR A PHYSICIAN:

2 1. A PHYSICIAN WHO IS BOARD CERTIFIED OR  
3 ELIGIBLE IN THE SAME PRACTICE SPECIALTY; OR

4 2. A GROUP PHYSICIAN PRACTICE THAT CONTAINS  
5 BOARD CERTIFIED OR ELIGIBLE PHYSICIANS IN THE SAME PRACTICE  
6 SPECIALTY;

7 (II) FOR A HEALTH CARE PROVIDER THAT IS NOT A  
8 PHYSICIAN, A HEALTH CARE PROVIDER THAT HOLDS THE SAME TYPE OF  
9 LICENSE.

10 [(5)] (9) (i) "Trauma center" means a primary adult resource  
11 center, level I trauma center, level II trauma center, level III trauma center, or  
12 pediatric trauma center that has been designated by the institute to provide care to  
13 trauma patients.

14 (ii) "Trauma center" includes an out-of-state pediatric facility  
15 that has entered into an agreement with the institute to provide care to trauma  
16 patients.

17 [(6)] (10) "Trauma patient" means a patient that is evaluated or  
18 treated in a trauma center and is entered into the State trauma registry as a trauma  
19 patient.

20 [(7)] (11) "Trauma physician" means a licensed physician who has  
21 been credentialed or designated by a trauma center to provide care to a trauma  
22 patient at a trauma center.

23 (b) [(1)] In addition to any other provisions of this subtitle, for a covered  
24 service rendered to an enrollee of a health maintenance organization by a health care  
25 provider not under written contract with the health maintenance organization, the  
26 health maintenance organization or its agent:

27 [(i)] (1) Shall pay the health care provider within 30 days  
28 after the receipt of a claim in accordance with the applicable provisions of this subtitle;  
29 and

30 [(ii)] (2) Shall pay the claim submitted by:

31 [1.] (I) A hospital at the rate approved by the Health  
32 Services Cost Review Commission;

1 [2.] (II) A trauma physician for trauma care rendered  
2 to a trauma patient in a trauma center, at the greater of:

3 [A.] 1. ~~140%~~ of the rate paid by the Medicare  
4 program, as published by the Centers for Medicare and Medicaid Services, for the  
5 same covered service, to a similarly licensed provider] ~~125% OF THE AVERAGE RATE~~  
6 ~~THE HEALTH MAINTENANCE ORGANIZATION PAID AS OF JANUARY 1 OF THE~~  
7 ~~PREVIOUS CALENDAR YEAR IN THE SAME GEOGRAPHIC AREA, AS DEFINED BY~~  
8 ~~THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, FOR THE SAME~~  
9 ~~COVERED SERVICE, TO SIMILARLY LICENSED PROVIDERS UNDER WRITTEN~~  
10 ~~CONTRACT WITH THE HEALTH MAINTENANCE ORGANIZATION;~~ or

11 [B.] 2. ~~The rate as of January 1, 2001 that the health~~  
12 ~~maintenance organization paid in the same geographic area, as published by the~~  
13 ~~Centers for Medicare and Medicaid Services, for the same covered service, to a~~  
14 ~~similarly licensed provider] ~~140% OF THE RATE PAID BY MEDICARE, AS~~  
15 ~~PUBLISHED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, FOR~~  
16 ~~THE SAME COVERED SERVICE TO A SIMILARLY LICENSED PROVIDER IN THE~~  
17 ~~SAME GEOGRAPHIC AREA AS OF AUGUST 1, 2008, INFLATED BY THE CHANGE IN~~  
18 ~~THE MEDICARE ECONOMIC INDEX FROM 2008 TO THE CURRENT YEAR;~~ and~~

19 [3.] (III) Any other health care provider:

20 1. FOR AN EVALUATION AND MANAGEMENT  
21 SERVICE, NO LESS THAN [at] the greater of:

22 A. [125% of the rate the health maintenance  
23 organization pays in the same geographic area, as published by the Centers for  
24 Medicare and Medicaid Services, for the same covered service, to a similarly licensed  
25 provider under written contract with the health maintenance organization] **125% OF**  
26 **THE AVERAGE RATE THE HEALTH MAINTENANCE ORGANIZATION PAID AS OF**  
27 **JANUARY 1 OF THE PREVIOUS CALENDAR YEAR IN THE SAME GEOGRAPHIC**  
28 **AREA, AS DEFINED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES,**  
29 **FOR THE SAME COVERED SERVICE, TO SIMILARLY LICENSED PROVIDERS UNDER**  
30 **WRITTEN CONTRACT WITH THE HEALTH MAINTENANCE ORGANIZATION;** or

31 B. [The rate as of January 1, 2000 that the health  
32 maintenance organization paid in the same geographic area, as published by the  
33 Centers for Medicare and Medicaid Services, for the same covered service, to a  
34 similarly licensed provider not under written contract with the health maintenance  
35 organization.] **140% OF THE RATE PAID BY MEDICARE, AS PUBLISHED BY THE**  
36 **CENTERS FOR MEDICARE AND MEDICAID SERVICES, FOR THE SAME COVERED**  
37 **SERVICE TO A SIMILARLY LICENSED PROVIDER IN THE SAME GEOGRAPHIC AREA**  
38 **AS OF AUGUST 1, 2008, INFLATED BY THE CHANGE IN THE MEDICARE**  
39 **ECONOMIC INDEX FROM 2008 TO THE CURRENT YEAR; AND**

1                   **2. FOR A SERVICE THAT IS NOT AN EVALUATION AND**  
 2 **MANAGEMENT SERVICE, NO LESS THAN 125% OF THE AVERAGE RATE THE**  
 3 **HEALTH MAINTENANCE ORGANIZATION PAID AS OF JANUARY 1 OF THE**  
 4 **PREVIOUS CALENDAR YEAR IN THE SAME GEOGRAPHIC AREA, AS DEFINED BY**  
 5 **THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, TO A SIMILARLY**  
 6 **LICENSED PROVIDER UNDER WRITTEN CONTRACT WITH THE HEALTH**  
 7 **MAINTENANCE ORGANIZATION FOR THE SAME COVERED SERVICE.**

8                   **(C) FOR THE PURPOSES OF SUBSECTION (B)(2)(III) OF THIS SECTION, A**  
 9 **HEALTH MAINTENANCE ORGANIZATION SHALL CALCULATE THE AVERAGE RATE**  
 10 **PAID TO SIMILARLY LICENSED PROVIDERS UNDER WRITTEN CONTRACT WITH**  
 11 **THE HEALTH MAINTENANCE ORGANIZATION FOR THE SAME COVERED SERVICE**  
 12 **BY SUMMING THE CONTRACTED RATE FOR ALL OCCURRENCES OF THE**  
 13 **CURRENT PROCEDURAL TERMINOLOGY CODE FOR THAT SERVICE AND THEN**  
 14 **DIVIDING BY THE TOTAL NUMBER OF OCCURRENCES OF THE CURRENT**  
 15 **PROCEDURAL TERMINOLOGY CODE.**

16                   **[(2)] ~~(C)~~ (D)** A health maintenance organization shall disclose, on  
 17 request of a health care provider not under written contract with the health  
 18 maintenance organization, the reimbursement rate required under ~~paragraph [(1)(ii)2~~  
 19 ~~and 3] ~~(2)(II) AND (III)~~ of this subsection **SUBSECTION (B)(2)(II) AND (III) OF THIS**  
 20 **SECTION.**~~

21                   **[(3) (i)] ~~(D)~~ (E) (1)** Subject to [subparagraph (ii) of this paragraph]  
 22 **PARAGRAPH (2) OF THIS SUBSECTION,** a health maintenance organization may  
 23 require a trauma physician not under contract with the health maintenance  
 24 organization to submit appropriate adjunct claims documentation and to include on  
 25 the uniform claim form a provider number assigned to the trauma physician by the  
 26 health maintenance organization.

27                   **[(ii)] (2)** If a health maintenance organization requires a  
 28 trauma physician to include a provider number on the uniform claim form in  
 29 accordance with [subparagraph (i) of this paragraph] **PARAGRAPH (1) OF THIS**  
 30 **SUBSECTION,** the health maintenance organization shall assign a provider number to  
 31 a trauma physician not under contract with the health maintenance organization at  
 32 the request of the physician.

33                   **[(4)] (3)** A trauma center, on request from a health maintenance  
 34 organization, shall verify that a licensed physician is credentialed or otherwise  
 35 designated by the trauma center to provide trauma care.

36                   **[(5)] (4)** Notwithstanding the provisions of § 19-701(d) of this  
 37 subtitle, for trauma care rendered to a trauma patient in a trauma center by a trauma

1 physician, a health maintenance organization may not require a referral or  
2 preauthorization for a service to be covered.

3 ~~[(c)]~~ ~~(F)~~ (F) (1) A health maintenance organization may seek  
4 reimbursement from an enrollee for any payment under subsection (b) of this section  
5 for a claim or portion of a claim submitted by a health care provider and paid by the  
6 health maintenance organization that the health maintenance organization  
7 determines is the responsibility of the enrollee.

8 (2) The health maintenance organization may request and the health  
9 care provider shall provide adjunct claims documentation to assist in making the  
10 determination under paragraph (1) of this subsection or under subsection (b) of this  
11 section.

12 ~~[(d)]~~ ~~(F)~~ (G) (1) A health care provider may enforce the provisions of this  
13 section by filing a complaint against a health maintenance organization with the  
14 Maryland Insurance Administration or by filing a civil action in a court of competent  
15 jurisdiction under § 1-501 or § 4-201 of the Courts Article.

16 (2) The Maryland Insurance Administration or a court shall award  
17 reasonable attorney fees if the complaint of the health care provider is sustained.

18 ~~(G)~~ (H) **THE MARYLAND HEALTH CARE COMMISSION ANNUALLY**  
19 **SHALL REVIEW PAYMENTS TO HEALTH CARE PROVIDERS TO DETERMINE THE**  
20 **COMPLIANCE OF HEALTH MAINTENANCE ORGANIZATIONS WITH THE**  
21 **REQUIREMENTS OF THIS SECTION AND REPORT ITS FINDINGS TO THE**  
22 **MARYLAND INSURANCE ADMINISTRATION.**

23 ~~(H)~~ (I) **THE MARYLAND INSURANCE ADMINISTRATION MAY TAKE**  
24 **ANY ACTION AUTHORIZED UNDER THIS SUBTITLE OR THE INSURANCE ARTICLE,**  
25 **INCLUDING CONDUCTING AN EXAMINATION UNDER TITLE 2, SUBTITLE 2 OF THE**  
26 **INSURANCE ARTICLE, TO INVESTIGATE AND ENFORCE A VIOLATION OF THE**  
27 **PROVISIONS OF THIS SECTION.**

28 ~~[(e)]~~ ~~(I)~~ (J) In addition to any other penalties under this subtitle, the  
29 Commissioner may impose a penalty not to exceed \$5,000 on any health maintenance  
30 organization which violates the provisions of this section if the violation is committed  
31 with such frequency as to indicate a general business practice of the health  
32 maintenance organization.

33 ~~(J)~~ (K) **THE MARYLAND INSURANCE ADMINISTRATION, IN**  
34 **CONSULTATION WITH THE MARYLAND HEALTH CARE COMMISSION, SHALL**  
35 **ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.**

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
37 January 1, 2010. It shall remain effective for a period 5 years and, at the end of

1 December 31, 2014, with no further action required by the General Assembly, this Act  
2 shall be abrogated and of no further force and effect.

Approved:

---

Governor.

---

President of the Senate.

---

Speaker of the House of Delegates.