

HOUSE BILL 1229

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EMERGENCY BILL

4lr2020

By: **Delegates Hough, Afzali, Aumann, Cluster, Eckardt, Frank, Glass, Hogan, Impallaria, Kach, Kipke, McComas, McConkey, McDermott, W. Miller, Otto, Parrott, Ready, Schulz, Serafini, Smigiel, Stocksedale, and Szeliga**

Introduced and read first time: February 7, 2014

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Health Benefit Exchange – Repeal – Transfer of Enrollees to**
3 **Federal Health Insurance Marketplace**

4 FOR the purpose of repealing the Maryland Health Benefit Exchange; repealing the
5 purpose, powers, duties, Board of Trustees, Executive Director and staff,
6 functions and operations, funding, and administration of the Maryland Health
7 Benefit Exchange; repealing the Maryland Health Benefit Exchange Fund;
8 repealing a certain Individual Exchange; repealing a certain SHOP Exchange;
9 repealing the requirement that a portion of a certain tax be distributed to the
10 Maryland Health Benefit Exchange Fund for a certain purpose; repealing a
11 certain termination date for a certain enrollment in the Maryland Health
12 Insurance Plan; altering certain notice requirements of the Board of the
13 Maryland Health Insurance Plan; repealing the authorization of the Board of
14 the Maryland Health Insurance Plan to allow the transfer of certain money into
15 the Maryland Health Benefit Exchange Fund for a certain purpose; repealing
16 certain duties of the Board of Trustees of the Maryland Health Benefit
17 Exchange and the Board of Trustees of the Maryland Health Insurance Plan;
18 repealing the authorization to use certain funds for certain purposes relating to
19 the State Reinsurance Program; stating the intent of the General Assembly that
20 certain individuals be transferred to and enrolled in the federal Health
21 Exchange Marketplace; requiring the Maryland Insurance Commissioner to
22 adopt certain regulations; repealing a certain requirement that carriers that
23 offer certain health benefit plans to small employers also offer certain other
24 qualified health plans under certain circumstances with a certain exception;
25 repealing a certain requirement that carriers that offer individual health
26 benefit plans also offer certain other qualified health plans under certain
27 circumstances with a certain exception; altering certain fraudulent insurance
28 acts; making conforming and stylistic changes; altering and repealing certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 definitions; making this Act an emergency measure; and generally relating to
2 the Maryland Health Benefit Exchange.

3 BY repealing

4 Article – Insurance

5 Section 6–103.2, 14–504(f)(4), 15–1204.1, and 31–101 through 31–119 and the
6 title “Title 31. Maryland Health Benefit Exchange”

7 Annotated Code of Maryland

8 (2011 Replacement Volume and 2013 Supplement)

9 BY repealing and reenacting, with amendments,

10 Article – Health – General

11 Section 15–101.1 and 19–214(d)(5)

12 Annotated Code of Maryland

13 (2009 Replacement Volume and 2013 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article – Insurance

16 Section 8–301(b)(2)(v) through (vii), 14–504(d), 15–1303, and 27–405(a)

17 Annotated Code of Maryland

18 (2011 Replacement Volume and 2013 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article – Insurance

21 Section 14–502(d), (f), and (g)

22 Annotated Code of Maryland

23 (2011 Replacement Volume and 2013 Supplement)

24 (As enacted by Chapter 1 of the Acts of the General Assembly of 2014)

25 BY adding to

26 Article – Insurance

27 Section 15–141

28 Annotated Code of Maryland

29 (2011 Replacement Volume and 2013 Supplement)

30 BY repealing and reenacting, with amendments,

31 Chapter 159 of the Acts of the General Assembly of 2013

32 Section 5, 6, 8, and 9

33 BY repealing

34 Chapter 1 of the Acts of the General Assembly of 2011

35 Section 2 through 8

36 BY repealing

37 Chapter 2 of the Acts of the General Assembly of 2011

38 Section 2 through 8

1 BY repealing
2 Chapter 152 of the Acts of the General Assembly of 2012
3 Section 4 through 10

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, That Section(s) 31–101 through 31–119 and the title “Title 31. Maryland
6 Health Benefit Exchange” of Article – Insurance of the Annotated Code of Maryland be
7 repealed.

8 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
9 read as follows:

10 **Article – Health – General**

11 15–101.1.

12 [(a)] Except as otherwise provided in this subtitle, a managed care
13 organization is not subject to the insurance laws of the State or to the provisions of
14 Title 19 of this article.

15 [(b)] A managed care organization may not be required to offer a qualified
16 plan, as defined in § 31–101 of the Insurance Article, in the Maryland Health Benefit
17 Exchange.]

18 19–214.

19 (d) (5) [(i)] Funds generated from the assessment under this subsection
20 may be used only as follows:

21 [1.] (I) To supplement coverage under the Medical
22 Assistance Program beyond the eligibility requirements in existence on January 1,
23 2008; and

24 [2.] (II) To provide funding for the operation and
25 administration of the Maryland Health Insurance Plan, including reimbursing the
26 Department for subsidizing the plan costs of members of the Maryland Health
27 Insurance Plan under a Medicaid waiver program[.]; AND

28 [(ii)] (III) Any funds remaining after expenditures under
29 [subparagraph (i)] ITEMS (I) AND (II) of this paragraph have been made may be
30 used[:

31 1. For] FOR the general operations of the Medicaid
32 program[; and

1 2. a broker–dealer or transfer agent under the Securities
2 Exchange Act of 1934 or the Maryland Securities Act; or

3 3. an investment company under the Investment
4 Company Act of 1940]; or

5 (vii) is, or is an employee of, the Maryland Health Benefit
6 Exchange, including the Maryland Health Benefit Exchange’s Consolidated Services
7 Center].

8 14–502.

9 (d) It is the intent of the General Assembly that the Plan operate as a
10 nonprofit entity and that Fund revenue, to the extent consistent with good business
11 practices, be used to[:

12 (1)] subsidize health insurance coverage for medically uninsurable
13 individuals and bridge eligible individuals]; and

14 (2) fund the State Reinsurance Program authorized under § 31–117 of
15 this article].

16 (f) (1) (i) A medically uninsurable individual enrolled in the Plan as of
17 December 31, 2013, who thereafter terminates enrollment may not reenroll in the
18 Plan unless enrolling as a bridge eligible individual.

19 (ii) Enrollment in the Plan shall be closed to any bridge eligible
20 individual who has not applied for enrollment in the Plan as of March 31, 2014.

21 [(iii) On the effective date of enrollment in a qualified health plan
22 through the Maryland Health Benefit Exchange, the enrollment of a bridge eligible
23 individual in the plan terminates.]

24 (2) Subject to paragraph (3) of this subsection, the Board[, in
25 consultation with the Maryland Health Benefit Exchange,] shall determine the
26 appropriate date on which the Plan shall decline to reenroll Plan members beyond the
27 term of the members’ existing Plan coverage.

28 (3) The date on which the Plan no longer will provide coverage to all
29 Plan members shall be no earlier than January 1, 2014, and no later than January 1,
30 2020.

31 (g) Beginning October 1, 2013, and annually thereafter until the Plan no
32 longer provides coverage to members, the Board shall provide notice to Plan members
33 that, effective January 1, 2014, the member:

1 (1) may not be denied health insurance because of a preexisting health
2 condition; and

3 (2) may be eligible to:

4 (i) enroll in the Maryland Medical Assistance Program;

5 (ii) purchase a health benefit plan offered in the [Maryland
6 Health Benefit Exchange or in the insurance market outside the Maryland Health
7 Benefit Exchange] **FEDERAL HEALTH INSURANCE MARKETPLACE**; and

8 (iii) receive federal premium and cost-sharing assistance for the
9 purchase of a health benefit plan [in the Maryland Health Benefit Exchange].

10 14-504.

11 (d) (1) [(i)] The Administrator shall deposit all money collected in
12 accordance with § 19-214(d)(1)(ii) of the Health – General Article in a separate
13 account, titled in the name of the State of Maryland, for the Maryland Health
14 Insurance Plan.

15 [(ii)] (2) The Administrator shall keep complete and separate
16 records of all transactions for the separate account.

17 (2) Beginning January 1, 2014, and subject to § 19-214(d)(5) of the
18 Health – General Article and paragraph (3) of this subsection, the Board may allow
19 the Administrator to transfer money in the separate account into the Maryland Health
20 Benefit Exchange Fund for the purpose of funding the State Reinsurance Program
21 authorized under § 31-117 of this article.

22 (3) A transfer of money under paragraph (2) of this subsection:

23 (i) shall be based on the determination of funding needs of the
24 Plan and the State Reinsurance Program made under paragraph (4) of this subsection;
25 and

26 (ii) may be made only from money in the separate account in
27 excess of the amount determined under paragraph (4)(i) of this subsection.

28 (4) On or before October 1, 2013, and on or before October 1 of each
29 year thereafter until the Plan no longer has any liability for claims submitted by Plan
30 enrollees, the Board of Trustees of the Maryland Health Benefit Exchange and the
31 Board of the Plan shall determine:

1 (i) the amount of money in the separate account that will be
2 needed to pay claims of Plan enrollees, support Plan operations, and otherwise meet
3 the obligations of the Plan for the following calendar year; and

4 (ii) the amount of money that will be needed to fund the
5 operations of the State Reinsurance Program for the following calendar year.

6 (5) On or before December 31, 2013, and on or before December 31 of
7 each year thereafter until the Plan no longer has any liability for claims submitted by
8 Plan enrollees and the State Reinsurance Program is terminated, the Board of
9 Trustees of the Maryland Health Benefit Exchange and the Board shall report to the
10 Governor and, in accordance with § 2-1246 of the State Government Article, the
11 General Assembly on:

- 12 (i) the transition of Plan enrollees out of the Plan, including:
- 13 1. how enrollees are made aware of changes in their
14 insurance options;
 - 15 2. how enrollees will be assisted through the transition;
16 and
 - 17 3. whether any funding will be required to support the
18 transition; and

19 (ii) the use of the Fund for the State Reinsurance Program.]

20 (f) [(4) (i) Beginning January 1, 2014, the funds collected in
21 accordance with § 19-214(d)(1)(ii) of the Health – General Article and deposited in the
22 Maryland Health Insurance Plan account of the Fund, may be used for the purposes of
23 establishing and operating the State Reinsurance Program authorized under § 31-117
24 of this article.

25 (ii) The Board and the Board of Trustees of the Maryland
26 Health Benefit Exchange shall develop and approve a plan for the appropriate amount
27 and timing of the use of the funds for the State Reinsurance Program.]

28 **15-141.**

29 **(A) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT INDIVIDUALS**
30 **WHO ARE ENROLLED IN THE MARYLAND HEALTH BENEFIT EXCHANGE WILL BE**
31 **TRANSFERRED TO AND ENROLLED IN THE FEDERAL HEALTH INSURANCE**
32 **MARKETPLACE.**

33 **(B) THE COMMISSIONER SHALL ADOPT REGULATIONS TO FACILITATE**
34 **THE TRANSFER TO AND ENROLLMENT IN THE FEDERAL HEALTH INSURANCE**

1 **MARKETPLACE FOR THOSE INDIVIDUALS WHO ARE ENROLLED IN THE**
2 **MARYLAND HEALTH BENEFIT EXCHANGE.**

3 [15–1204.1.

4 (a) This section applies to a carrier with respect to any health benefit plan
5 that:

6 (1) is not a grandfathered health plan, as defined in § 1251 of the
7 Affordable Care Act; and

8 (2) is issued, delivered, or renewed in the State on or after January 1,
9 2014.

10 (b) (1) Except as provided in this subsection and § 31–110(f) of this
11 article, a carrier may not offer health benefit plans to small employers in the State
12 unless the carrier also offers qualified health plans, as defined in § 31–101 of this
13 article, in the Small Business Health Options Program of the Maryland Health Benefit
14 Exchange in compliance with the requirements of Title 31 of this article.

15 (2) A carrier is exempt from the requirement in paragraph (1) of this
16 subsection if:

17 (i) the reported total aggregate annual earned premium from
18 all health benefit plans offered to small employers in the State for the carrier and any
19 other carriers in the same insurance holding company system, as defined in § 7–101 of
20 this article, is less than \$20,000,000;

21 (ii) the Commissioner determines that the carrier complies with
22 the procedures established under paragraph (3) of this subsection; and

23 (iii) when the carrier ceases to meet the requirements for the
24 exemption, the carrier provides to the Commissioner immediate notice and its plan for
25 complying with the requirement in paragraph (1) of this subsection.

26 (3) The Commissioner shall establish procedures for a carrier to
27 submit evidence each year that the carrier meets the requirements necessary to
28 qualify for an exemption under paragraph (2) of this subsection.

29 (4) Notwithstanding the exemption provided in paragraph (2) of this
30 subsection, the Commissioner, in consultation with the Maryland Health Benefit
31 Exchange:

32 (i) may assess the impact of the exemption provided in
33 paragraph (2) of this subsection and, based on that assessment, alter the limit on the
34 amount of annual premiums that may not be exceeded to qualify for the exemption;
35 and

1 (ii) shall make any change in the exemption requirement by
2 regulation.]

3 15-1303.

4 (a) In addition to any other requirements under this article, a carrier that
5 offers individual health benefit plans in this State shall:

6 (1) have demonstrated the capacity to administer the individual
7 health benefit plans, including adequate numbers and types of administrative staff;

8 (2) have a satisfactory grievance procedure and ability to respond to
9 calls, questions, and complaints from enrollees or insureds; and

10 (3) design policies to help ensure that enrollees or insureds have
11 adequate access to providers of health care.

12 [(b) (1) Except as provided in this subsection and § 31-110(f) of this
13 article, a carrier may not offer individual health benefit plans in the State unless the
14 carrier also offers qualified health plans, as defined in § 31-101 of this article, in the
15 Individual Exchange of the Maryland Health Benefit Exchange in compliance with the
16 requirements of Title 31 of this article.

17 (2) A carrier is exempt from the requirement in paragraph (1) of this
18 subsection if:

19 (i) 1. the reported total aggregate annual earned premium
20 from all individual health benefit plans in the State for the carrier and any other
21 carriers in the same insurance holding company system, as defined in § 7-101 of this
22 article, is less than \$10,000,000; or

23 2. the only individual health benefit plans that the
24 carrier offers in the State are student health plans as defined in 45 C.F.R. § 147.145;

25 (ii) the Commissioner determines that the carrier complies with
26 the procedures established under paragraph (3) of this subsection; and

27 (iii) when the carrier ceases to meet the requirements for the
28 exemption, the carrier provides to the Commissioner immediate notice and its plan for
29 complying with the requirement in paragraph (1) of this subsection.

30 (3) The Commissioner shall establish procedures for a carrier to
31 submit evidence each year that the carrier meets the requirements necessary to
32 qualify for an exemption under paragraph (2) of this subsection.

1 (4) Notwithstanding the exemption provided in paragraph (2) of this
2 subsection, any carrier that offers a catastrophic plan, as defined by the Affordable
3 Care Act, in the State also must offer at least one catastrophic plan in the Maryland
4 Health Benefit Exchange.

5 (5) Notwithstanding the exemption provided in paragraph (2) of this
6 subsection, the Commissioner, in consultation with the Maryland Health Benefit
7 Exchange:

8 (i) may assess the impact of the exemption provided in
9 paragraph (2) of this subsection and, based on that assessment, alter the limit on the
10 amount of annual premiums that may not be exceeded to qualify for the exemption;
11 and

12 (ii) shall make any change in the exemption requirement by
13 regulation.

14 (c) **(B)** (1) For each calendar quarter, a carrier that offers individual
15 health benefit plans in the State shall submit to the Commissioner a report that
16 includes:

17 (i) the number of applications submitted to the carrier for
18 individual coverage; and

19 (ii) the number of declinations issued by the carrier for
20 individual coverage.

21 (2) The report required under paragraph (1) of this subsection shall be
22 filed with the Commissioner no later than 30 days after the last day of the quarter for
23 which the information is provided.

24 **[(d)] (C)** (1) If a carrier denies coverage under a medically underwritten health
25 benefit plan to an individual in the nongroup market, the carrier shall provide:

26 (i) the individual with specific information regarding the
27 availability of coverage under the Maryland Health Insurance Plan established under
28 Title 14, Subtitle 5 of this article; and

29 (ii) the Maryland Health Insurance Plan with:

30 1. the name and address of the individual who was
31 denied coverage; and

32 2. if the individual applied for coverage through an
33 insurance producer, the name and, if available, the address of the insurance producer.

1 (1) the findings of the study, which, to the extent feasible, shall
2 include the extent to which § 15–140(d) of the Insurance Article, as enacted by Section
3 3 of this Act, has:

4 (i) been effective in promoting continuity of care for
5 Marylanders;

6 (ii) affected newly eligible populations and trends in health
7 disparities;

8 (iii) had a disparate impact on specific populations, including
9 individuals suffering from mental health and substance use disorders; and

10 (iv) had a discriminatory impact based on gender identity or
11 sexual orientation; and

12 (2) recommendations as to additional legislation, if any, that should be
13 considered regarding rates of compensation and methods of payment, or any other
14 measures that would increase the effectiveness of the State’s efforts to promote
15 continuity of care.

16 SECTION 6. AND BE IT FURTHER ENACTED, That:

17 (a) The [Maryland Health Benefit Exchange and the] Maryland Insurance
18 Administration shall:

19 (1) conduct a study of the impact of the Affordable Care Act’s
20 allowance of a tobacco use rating of 1.5 to 1, including:

21 (i) its effect on insurance premiums generally;

22 (ii) its effect on the affordability and purchase of insurance, and
23 access to health care, for tobacco users; and

24 (iii) any disparate impact on specific vulnerable populations; and

25 (2) assess the options that may be available to the State to address
26 any adverse consequences of the tobacco use rating.

27 (b) On or before September 1, 2014, the [Maryland Health Benefit Exchange
28 and the] Maryland Insurance Administration shall report to the Governor and, in
29 accordance with § 2–1246 of the State Government Article, the General Assembly, on
30 the findings of the study and any recommendations for further legislative actions.

31 SECTION 8. AND BE IT FURTHER ENACTED, That:

1 (a) The [Maryland Health Benefit Exchange and the] Maryland Insurance
2 Administration shall:

3 (1) conduct a study of the impact of federal regulations governing the
4 manner in which pediatric dental benefits must be offered and purchased [inside and
5 outside the Maryland Health Benefit Exchange], including:

6 (i) their effect on the affordability and accessibility of pediatric
7 dental benefits; and

8 (ii) their effect on children's access to dental care; and

9 (2) assess the options that may be available to the State to address
10 any adverse consequences of the manner in which pediatric dental benefits must be
11 offered and purchased under the federal regulations.

12 (b) On or before December 1, 2014, the [Maryland Health Benefit Exchange
13 and the] Maryland Insurance Administration shall report to the Governor and, in
14 accordance with § 2-1246 of the State Government Article, the General Assembly on
15 the findings of the study and any recommendations for further legislative action.

16 SECTION 9. AND BE IT FURTHER ENACTED, That:

17 (a) (1) The [Maryland Health Benefit Exchange and the] Maryland
18 Insurance Administration shall conduct a study of the captive producer program
19 established under Section 2 of this Act.

20 (2) The study shall include an analysis of the effect of the program on:

21 (i) [Exchange enrollment;

22 (ii)] reduction in the percentage of the State's uninsured; AND

23 (iii) the percentage of Maryland residents eligible for federal
24 subsidies and cost-sharing assistance who access federal affordability programs[]; and

25 (iv) the percentage of Maryland residents who transition from
26 health benefit plans outside the Exchange to qualified health plans inside the
27 Exchange].

28 (b) On or before December 1, 2015, the [Maryland Health Benefit Exchange
29 and the] Maryland Insurance Administration shall report to the Governor and, in
30 accordance with § 2-1246 of the State Government Article, the General Assembly on
31 the findings of the study and any recommendations for further legislative action.

1 SECTION 3. AND BE IT FURTHER ENACTED, That Section(s) 2 through 8 of
2 Chapter 1 of the Acts of the General Assembly of 2011 be repealed.

3 SECTION 4. AND BE IT FURTHER ENACTED, That Section(s) 2 through 8 of
4 Chapter 2 of the Acts of the General Assembly of 2011 be repealed.

5 SECTION 5. AND BE IT FURTHER ENACTED, That Section(s) 4 through 10
6 of Chapter 152 of the Acts of the General Assembly of 2012 be repealed.

7 SECTION 6. AND BE IT FURTHER ENACTED, That the publishers of the
8 Annotated Code of Maryland, in consultation with and subject to the approval of the
9 Department of Legislative Services, shall make nonsubstantive corrections to
10 codification, style, capitalization, punctuation, grammar, spelling, and any reference
11 rendered incorrect or obsolete by this Act, with no further action required by the
12 General Assembly. The publishers shall adequately describe any such correction in an
13 editor's note following the section affected.

14 SECTION 7. AND BE IT FURTHER ENACTED, That this Act is an emergency
15 measure, is necessary for the immediate preservation of the public health or safety,
16 has been passed by a ye and nay vote supported by three-fifths of all the members
17 elected to each of the two Houses of the General Assembly, and shall take effect from
18 the date it is enacted.