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Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Health Insurers - Recovery of Costs of Treatment from Third Parties - Tobacco-Related**
3 **Diseases**

4 FOR the purpose of authorizing health insurers and health maintenance organizations to
5 seek reimbursement from third parties for the cost of health care services provided
6 to their insureds for treatment of a tobacco-related disease under certain
7 circumstances; specifying the rights of a health insurer and health maintenance
8 organization in regard to recovery of those costs from third parties; specifying the
9 availability of certain defenses and procedures normally available to third parties
10 for use in certain causes of action; authorizing a health insurer and health
11 maintenance organization to proceed under a certain theory in a cause of action to
12 recover costs for health care services provided to an insured for treatment of a
13 tobacco-related disease; defining certain terms; and generally relating to
14 authorizing health insurers and health maintenance organizations to seek
15 reimbursement from third parties for the cost of health care services provided to
16 insureds for treatment of a tobacco-related disease.

17 BY adding to

18 Article 48A - Insurance Code
19 Section 490FF
20 Annotated Code of Maryland
21 (1994 Replacement Volume and 1995 Supplement)

22 BY repealing and reenacting, with amendments,

23 Article - Health - General
24 Section 19-706(i)
25 Annotated Code of Maryland
26 (1990 Replacement Volume and 1995 Supplement)

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

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1 **Article 48A - Insurance Code**

2 490FF.

3 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
4 INDICATED.

5 (2) "HEALTH CARE SERVICE" MEANS A HEALTH OR MEDICAL CARE
6 PROCEDURE OR SERVICE RENDERED BY A HEALTH CARE PROVIDER THAT:

7 (I) PROVIDES TESTING, DIAGNOSIS, OR TREATMENT OF HUMAN
8 DISEASE OR DYSFUNCTION; OR

9 (II) DISPENSES DRUGS, MEDICAL DEVICES, MEDICAL APPLIANCES,
10 OR MEDICAL GOODS FOR THE TREATMENT OF A HUMAN DISEASE OR
11 DYSFUNCTION.

12 (3) "TOBACCO PRODUCT" MEANS ANY SUBSTANCE CONTAINING
13 TOBACCO, INCLUDING CIGARETTES, CIGARS, SMOKING TOBACCO, SNUFF, OR
14 SMOKELESS TOBACCO.

15 (4) (I) "TOBACCO-RELATED DISEASE" MEANS A DISEASE THAT IS
16 CAUSED BY OR IS A DIRECT RESULT OF THE USE OF A TOBACCO PRODUCT.

17 (II) "TOBACCO-RELATED DISEASE" INCLUDES:

18 1. EMPHYSEMA;

19 2. HEART DISEASE; AND

20 3. LUNG CANCER.

21 (B) AN INSURER OR NONPROFIT HEALTH SERVICE PLAN THAT PROVIDES
22 COVERAGE FOR HEALTH CARE SERVICES TO ANY GROUP OR INDIVIDUAL ON AN
23 EXPENSE-INCURRED BASIS UNDER A HEALTH INSURANCE CONTRACT OR POLICY
24 ISSUED OR DELIVERED IN THE STATE, INCLUDING A HEALTH MAINTENANCE
25 ORGANIZATION, MAY SEEK REIMBURSEMENT FROM A THIRD PARTY TO RECOVER
26 THE COST OF THE HEALTH CARE SERVICES PROVIDED TO AN INSURED FOR
27 TREATMENT OF A TOBACCO-RELATED DISEASE.

28 (C) WHENEVER AN INSURER OR NONPROFIT HEALTH SERVICE PLAN,
29 INCLUDING A HEALTH MAINTENANCE ORGANIZATION, PAYS FOR OR BECOMES
30 LIABLE FOR THE PAYMENT OF HEALTH CARE SERVICES PROVIDED TO AN INSURED
31 FOR TREATMENT OF A TOBACCO-RELATED DISEASE, THE INSURER OR NONPROFIT
32 HEALTH SERVICE PLAN HAS THE RIGHT TO AN AUTOMATIC SUBROGATION TO ANY
33 RIGHTS THAT AN INSURED, LEGAL REPRESENTATIVE OF AN INSURED, OR ESTATE
34 OF AN INSURED HAS AGAINST A THIRD PARTY FOR THE FULL AMOUNT OF BENEFITS
35 PAID BY THE INSURER, NONPROFIT HEALTH SERVICE PLAN, OR HEALTH
36 MAINTENANCE ORGANIZATION FOR HEALTH CARE SERVICES PROVIDED TO THE
37 INSURED FOR TREATMENT OF A TOBACCO-RELATED DISEASE.

38 (D) (1) IN AN ACTION BROUGHT BY AN INSURER, NONPROFIT HEALTH
39 SERVICE PLAN, OR HEALTH MAINTENANCE ORGANIZATION TO RECOVER COSTS
40 UNDER SUBSECTION (B) OF THIS SECTION, IT SHALL BE PRESUMED THAT THE USE OF

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1 A TOBACCO PRODUCT BY THE INSURED IS THE CAUSE OF OR A DIRECT RESULT OF
2 THE INSURED'S TOBACCO-RELATED DISEASE.

3 (2) THE THIRD PARTY HAS THE BURDEN OF REBUTTING THE
4 PRESUMPTION ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

5 (E) (1) IN AN ACTION BROUGHT BY AN INSURER, NONPROFIT HEALTH
6 SERVICE PLAN, OR HEALTH MAINTENANCE ORGANIZATION TO RECOVER COSTS
7 UNDER SUBSECTION (B) OF THIS SECTION, THE PRINCIPLES OF COMMON LAW AND
8 EQUITY AS TO ASSIGNMENT, LIEN, SUBROGATION, COMPARATIVE NEGLIGENCE,
9 ASSUMPTION OF RISK, AND ALL OTHER AFFIRMATIVE DEFENSES THAT MAY BE
10 AVAILABLE TO A THIRD PARTY ARE TO BE ABROGATED TO THE EXTENT
11 NECESSARY TO ENSURE THE FULL RECOVERY BY THE INSURER, NONPROFIT
12 HEALTH SERVICE PLAN, OR HEALTH MAINTENANCE ORGANIZATION FROM THIRD
13 PARTY RESOURCES OF THE COSTS OF HEALTH CARE SERVICES PROVIDED TO AN
14 INSURED FOR TREATMENT OF A TOBACCO-RELATED DISEASE.

15 (2) IN AN ACTION BROUGHT BY AN INSURED TO RECOVER DAMAGES
16 AGAINST A THIRD PARTY RELATED TO A TOBACCO-RELATED DISEASE, THE
17 PRINCIPLES OF COMMON LAW AND EQUITY AS TO ASSIGNMENT, LIEN,
18 SUBROGATION, COMPARATIVE NEGLIGENCE, ASSUMPTION OF RISK, AND ALL
19 OTHER AFFIRMATIVE DEFENSES SHALL APPLY TO THE INSURED, BUT THESE
20 PRINCIPLES MAY NOT ACT TO REDUCE THE RECOVERY OF AN INSURER, NONPROFIT
21 HEALTH SERVICE PLAN, OR HEALTH MAINTENANCE ORGANIZATION FOR THE COST
22 OF HEALTH CARE SERVICES PROVIDED TO THE INSURED FOR TREATMENT OF A
23 TOBACCO-RELATED DISEASE.

24 (F) IN AN ACTION BROUGHT BY AN INSURER, NONPROFIT HEALTH SERVICE
25 PLAN, OR HEALTH MAINTENANCE ORGANIZATION TO RECOVER COSTS UNDER
26 SUBSECTION (B) OF THIS SECTION, AS PART OF THE ACTION, THE INSURED MAY
27 RECOVER THE AMOUNT OF ANY DEDUCTIBLES OR COPAYMENTS PAID BY THE
28 INSURED THAT ARE RELATED TO THE HEALTH CARE SERVICES PROVIDED TO THE
29 INSURED FOR TREATMENT OF A TOBACCO-RELATED DISEASE.

30 (G) IN AN ACTION BROUGHT BY AN INSURER, NONPROFIT HEALTH SERVICE
31 PLAN, OR HEALTH MAINTENANCE ORGANIZATION TO RECOVER COSTS UNDER
32 SUBSECTION (B) OF THIS SECTION, THE INSURER, NONPROFIT HEALTH SERVICE
33 PLAN, OR HEALTH MAINTENANCE ORGANIZATION MAY BE ALLOWED TO PROCEED
34 UNDER A MARKET SHARE THEORY WHERE A THIRD PARTY IS LIABLE DUE TO ITS
35 MANUFACTURE, SALE, OR DISTRIBUTION OF A TOBACCO PRODUCT IF THE TOBACCO
36 PRODUCT USED BY THE INSURED IS SUBSTANTIALLY INTERCHANGEABLE AMONG
37 BRANDS AND THAT SUBSTANTIALLY SIMILAR, FACTUAL OR LEGAL ISSUES WOULD
38 BE INVOLVED IN SEEKING RECOVERY AGAINST EACH LIABLE THIRD PARTY
39 INDIVIDUALLY.

40 (H) (1) ACTIONS BROUGHT BY AN INSURER, NONPROFIT HEALTH SERVICE
41 PLAN, OR HEALTH MAINTENANCE ORGANIZATION TO RECOVER COSTS UNDER
42 SUBSECTION (B) OF THIS SECTION SHALL BE COMMENCED WITHIN 5 YEARS AFTER
43 THE DATE A CAUSE OF ACTION ACCRUES, WITH THE PERIOD RUNNING FROM THE
44 LATER OF THE DATE OF:

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1 (I) A PAYMENT MADE BY THE INSURER, NONPROFIT HEALTH
2 SERVICE PLAN, OR HEALTH MAINTENANCE ORGANIZATION FOR HEALTH CARE
3 SERVICES PROVIDED TO AN INSURED FOR TREATMENT OF A TOBACCO-RELATED
4 DISEASE; OR

5 (II) DISCOVERY BY THE INSURER, NONPROFIT HEALTH SERVICE
6 PLAN, OR HEALTH MAINTENANCE ORGANIZATION OF A CAUSE OF ACTION FILED BY
7 AN INSURED, LEGAL REPRESENTATIVE OF AN INSURED, OR ESTATE OF AN INSURED
8 AGAINST A THIRD PARTY TO RECOVER DAMAGES ASSOCIATED WITH A
9 TOBACCO-RELATED DISEASE.

10 (2) FOR PURPOSES OF THIS SUBSECTION, EACH PAYMENT MADE BY AN
11 INSURER, NONPROFIT HEALTH SERVICE PLAN, OR HEALTH MAINTENANCE
12 ORGANIZATION FOR HEALTH CARE SERVICES PROVIDED TO AN INSURED FOR
13 TREATMENT OF A TOBACCO-RELATED DISEASE SHALL BE CONSIDERED A
14 SEPARATE CAUSE OF ACTION.

15 (I) FOR PURPOSES OF THIS SECTION, AN INSURED SHALL BE DEEMED TO
16 HAVE PROVIDED TO THE INSURER, NONPROFIT HEALTH SERVICE PLAN, OR HEALTH
17 MAINTENANCE ORGANIZATION THE AUTHORITY TO OBTAIN AND RELEASE
18 MEDICAL RECORDS AND OTHER INFORMATION WITH RESPECT TO HEALTH CARE
19 SERVICES PROVIDED TO THE INSURED FOR TREATMENT OF A TOBACCO-RELATED
20 DISEASE.

21 **Article - Health - General**

22 19-706.

23 (i) The provisions of Article 48A, §§ 490U, 490AA, 490CC, [and] 490DD, AND
24 490FF of the Code shall apply to health maintenance organizations.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 1996.