
By: Senators Astle and Dorman, Dorman, and Madden

Introduced and read first time: February 2, 1996

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 29, 1996

CHAPTER _____

1 AN ACT concerning

2 ~~Health Care Provider and Payor Communications Act~~ **Health Care Provider and Payor**
3 **Act of 1996**

4 FOR the purpose of prohibiting certain insurers and health maintenance organizations
5 from prohibiting health care practitioners from disclosing or communicating certain
6 information to enrollees ~~or~~ subscribers, and certain other persons under certain
7 circumstances; prohibiting insurers and health maintenance organizations from
8 requiring health care providers to indemnify or hold harmless the insurer or health
9 maintenance organization from any liability arising from a coverage decision ~~made~~
10 or negligent act by the insurer or health maintenance organization under certain
11 circumstances; requiring health maintenance organizations that use a certain
12 ~~economic~~ practice profile to evaluate a provider under contract with the health
13 maintenance organization to disclose to the provider certain information concerning
14 the ~~economic~~ practice profile prior to taking a certain action against the provider;
15 prohibiting certain insurers and health maintenance organizations from withholding
16 certain reimbursements regardless of the method of reimbursement used by the
17 insurer or health maintenance organization; altering a certain provision of law
18 related to developing certain forms to require that a certain study be performed by
19 certain persons related to the feasibility of a certain uniform voucher form; making
20 a certain technical correction; establishing a certain study group to evaluate the use
21 and effectiveness of certain patient and provider grievance appeal procedures;
22 requiring the study group to make a certain report by a certain date; providing for
23 the application of certain provisions of this Act to health maintenance
24 organizations; defining certain terms; providing for the effective date of certain
25 provisions of this Act; and generally relating to certain insurers and health
26 maintenance organizations.

27 BY adding to

2

1 Article 48A - Insurance Code
2 Section 354RR, 470HH, 477RR, and 490FF
3 Annotated Code of Maryland
4 (1994 Replacement Volume and 1995 Supplement)

5 BY repealing and reenacting, with amendments,
6 Article 48A - Insurance Code
7 Section 490DD
8 Annotated Code of Maryland
9 (1994 Replacement Volume and 1995 Supplement)

10 BY adding to
11 Article - Health - General
12 Section 19-706(l) and 19-710(r) and (s)
13 Annotated Code of Maryland
14 (1990 Replacement Volume and 1995 Supplement)

15 BY repealing and reenacting, with amendments,
16 Chapter 577 of the Acts of the General Assembly of 1995
17 Section 2 and 3

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

20 **Article 48A - Insurance Code**

21 354RR.

22 A NONPROFIT HEALTH SERVICE PLAN MAY NOT BY CONTRACT, OR IN ANY
23 OTHER MANNER, REQUIRE A HEALTH CARE PROVIDER TO INDEMNIFY THE PLAN
24 OR HOLD THE PLAN HARMLESS FROM ~~OR AGAINST ANY LIABILITY ARISING FROM~~
25 ~~COVERAGE DECISIONS MADE BY THE PLAN OR FROM THE CONDUCT OF ANY OTHER~~
26 ~~PERSON OTHER THAN THE HEALTH CARE PROVIDER OR THE HEALTH CARE~~
27 ~~PROVIDER'S AGENTS OR EMPLOYEES~~ A COVERAGE DECISION OR NEGLIGENT ACT
28 OF THE NONPROFIT HEALTH SERVICE PLAN.

29 470HH.

30 A HOSPITAL OR MAJOR MEDICAL INSURER MAY NOT BY CONTRACT, OR IN ANY
31 OTHER MANNER, REQUIRE A HEALTH CARE PROVIDER TO INDEMNIFY THE
32 INSURER OR HOLD THE INSURER HARMLESS FROM ~~OR AGAINST ANY LIABILITY~~
33 ~~ARISING FROM COVERAGE DECISIONS MADE BY THE INSURER OR FROM THE~~
34 ~~CONDUCT OF ANY OTHER PERSON OTHER THAN THE HEALTH CARE PROVIDER OR~~
35 ~~THE HEALTH CARE PROVIDER'S AGENTS OR EMPLOYEES~~ A COVERAGE DECISION OR
36 NEGLIGENT ACT OF THE INSURER.

37 477RR.

38 A GROUP OR BLANKET HEALTH INSURER MAY NOT BY CONTRACT, OR IN ANY
39 OTHER MANNER, REQUIRE A HEALTH CARE PROVIDER TO INDEMNIFY THE

3
1 INSURER OR HOLD THE INSURER HARMLESS FROM ~~OR AGAINST ANY LIABILITY~~
2 ~~ARISING FROM COVERAGE DECISIONS MADE BY THE INSURER OR FROM THE~~
3 ~~CONDUCT OF ANY OTHER PERSON OTHER THAN THE HEALTH CARE PROVIDER OR~~
4 ~~THE HEALTH CARE PROVIDER'S AGENTS OR EMPLOYEES~~ A COVERAGE DECISION OR
5 NEGLIGENT ACT OF THE INSURER.

6 490DD.

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

8 (2) "Carrier" means:

9 (i) An insurer;

10 (ii) A nonprofit health service plan;

11 (iii) A health maintenance organization;

12 (iv) A dental plan organization; or

13 (v) Any other person or organization that provides health benefit
14 plans subject to State regulation.

15 (3) "Health care practitioner" means any individual who is licensed,
16 certified, or otherwise authorized under the Health Occupations Article to provide health
17 care services.

18 (b) A carrier [that reimburses a health care practitioner on an aggregate fixed
19 sum basis or on a per capita basis] may not reimburse [the] A health care practitioner in
20 an amount less than the sum or rate negotiated in the carrier's provider contract with the
21 health care practitioner.

22 ~~(C) THIS SECTION APPLIES TO ANY METHOD OF REIMBURSEMENT USED BY A~~
23 ~~CARRIER TO REIMBURSE A HEALTH CARE PRACTITIONER, INCLUDING~~
24 ~~REIMBURSEMENT MADE ON A CAPITATED OR NONCAPITATED BASIS.~~

25 ~~{(c)}~~ ~~(D)~~ This section does not prohibit a carrier from providing bonuses or other
26 incentive-based compensation to a health care practitioner if the bonus or other
27 incentive-based compensation does not:

28 (1) Violate the provisions of § 19-705.1 of the Health - General Article; or

29 (2) Deter the delivery of medically appropriate care to an enrollee.

30 490FF.

31 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
32 INDICATED.

33 (2) "CARRIER" MEANS:

34 (I) AN INSURER;

35 (II) A NONPROFIT HEALTH SERVICE PLAN;

36 (III) A HEALTH MAINTENANCE ORGANIZATION;

4

1 (IV) A DENTAL PLAN ORGANIZATION; OR

2 (V) ANY OTHER PERSON OR ORGANIZATION THAT PROVIDES
3 HEALTH BENEFIT PLANS SUBJECT TO STATE REGULATION.

4 (3) "HEALTH CARE ~~PRACTITIONER~~ PROVIDER" MEANS ANY
5 INDIVIDUAL WHO IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED UNDER
6 THE HEALTH OCCUPATIONS ARTICLE TO PROVIDE HEALTH CARE SERVICES.

7 ~~(B) A CARRIER, AS A CONDITION OF A CONTRACT WITH A HEALTH CARE
8 PRACTITIONER, OR IN ANY OTHER MANNER, MAY NOT PROHIBIT A HEALTH CARE
9 PRACTITIONER FROM DISCUSSING OR COMMUNICATING TO AN ENROLLEE,
10 SUBSCRIBER, OR OTHER PERSON INFORMATION THAT:~~

11 ~~(1) IS NECESSARY OR APPROPRIATE FOR THE DELIVERY OF QUALITY
12 HEALTH CARE SERVICES;~~

13 ~~(2) RELATES TO TREATMENT ALTERNATIVES FOR THE ENROLLEE OR
14 SUBSCRIBER, REGARDLESS OF THE PROVISIONS OR LIMITATIONS OF THE
15 ENROLLEE'S OR SUBSCRIBER'S COVERAGE UNDER THE CARRIER'S HEALTH BENEFIT
16 PLAN;~~

17 ~~(3) IS NECESSARY OR APPROPRIATE FOR MAINTAINING THE
18 PRACTITIONER-PATIENT RELATIONSHIP WITH THE ENROLLEE OR SUBSCRIBER; OR~~

19 ~~(4) EXPRESSES OPINIONS REGARDING THE CARRIER OR THE HEALTH
20 CARE PRACTITIONER'S EXPERIENCE WITH THE CARRIER.~~

21 ~~(C) THIS SECTION DOES NOT PROHIBIT A CARRIER, AS A CONDITION OF A
22 HEALTH CARE PRACTITIONER'S CONTRACT WITH THE CARRIER, FROM
23 PROHIBITING A HEALTH CARE PRACTITIONER FROM:~~

24 ~~(1) DISCLOSING THE TERMS OF THE CONTRACT BETWEEN THE
25 CARRIER AND THE PRACTITIONER;~~

26 ~~(2) COMMUNICATING OR ACTING IN A MANNER THAT WOULD
27 TORTIOUSLY INTERFERE WITH EXISTING CONTRACTUAL RELATIONSHIPS TO
28 WHICH THE CARRIER IS A PARTY; OR~~

29 ~~(3) COMMUNICATING STATEMENTS OF FACT ABOUT THE CARRIER
30 THAT ARE FALSE, THAT THE PRACTITIONER KNOWS TO BE FALSE, AND THAT CAUSE
31 DAMAGE TO THE CARRIER.~~

32 ~~(D) THIS SECTION DOES NOT PROHIBIT A HEALTH CARE PRACTITIONER
33 FROM PROVIDING TO OR DISCUSSING WITH AN ENROLLEE OR SUBSCRIBER
34 INFORMATION ABOUT THE RIGHT TO APPEAL OF THE ENROLLEE OR SUBSCRIBER
35 COVERAGE DETERMINATIONS OF THE CARRIER WITH WHICH THE PRACTITIONER
36 OR THE ENROLLEE OR SUBSCRIBER DO NOT AGREE.~~

37 (B) A CARRIER, AS A CONDITION OF A CONTRACT WITH A HEALTH CARE
38 PROVIDER, OR IN ANY OTHER MANNER, MAY NOT PROHIBIT A HEALTH CARE
39 PROVIDER FROM DISCUSSING OR COMMUNICATING INFORMATION TO AN
40 ENROLLEE, PUBLIC OFFICIAL, SUBSCRIBER, OR OTHER PERSON INFORMATION THAT

5

1 IS NECESSARY OR APPROPRIATE FOR THE DELIVERY OF HEALTH CARE SERVICES,
2 INCLUDING:

3 (1) COMMUNICATIONS RELATING TO TREATMENT ALTERNATIVES;

4 (2) COMMUNICATIONS NECESSARY OR APPROPRIATE TO MAINTAIN
5 THE PROVIDER-PATIENT RELATIONSHIP WHILE THE PATIENT IS UNDER THE
6 PROVIDER'S CARE;

7 (3) COMMUNICATIONS REGARDING AN ENROLLEE'S OR SUBSCRIBER'S
8 RIGHT TO APPEAL COVERAGE DETERMINATIONS OF A CARRIER WITH WHICH THE
9 PROVIDER OR THE ENROLLEE OR SUBSCRIBER DOES NOT AGREE; AND

10 (4) OPINIONS AND THE BASIS OF AN OPINION REGARDING PUBLIC
11 POLICY ISSUES.

12 (C) THIS SECTION DOES NOT PROHIBIT A CARRIER, AS A CONDITION OF A
13 CONTRACT BETWEEN THE HEALTH CARE PROVIDER AND THE CARRIER, FROM
14 PROHIBITING A HEALTH CARE PROVIDER FROM TORTIOUS INTERFERENCE WITH A
15 CONTRACT AS RECOGNIZED UNDER MARYLAND LAW.

16 **Article - Health - General**

17 19-706.

18 (L) THE PROVISIONS OF ARTICLE 48A, § 490FF OF THE CODE APPLY TO
19 HEALTH MAINTENANCE ORGANIZATIONS.

20 19-710.

21 (R) (1) IN THIS SUBSECTION, "ECONOMIC PRACTICE PROFILE" MEANS A
22 PROFILE, SUMMARY, ~~OR ECONOMIC ANALYSIS, OR OTHER ANALYSIS~~ OF DATA
23 CONCERNING SERVICES RENDERED OR UTILIZED BY A PROVIDER ~~THAT IS~~ UNDER
24 CONTRACT WITH OR EMPLOYED BY A HEALTH MAINTENANCE ORGANIZATION ~~IN~~
25 FOR THE PROVISION OF HEALTH CARE SERVICES BY THE PROVIDER TO ENROLLEES
26 OR SUBSCRIBERS OF THE HEALTH MAINTENANCE ORGANIZATION.

27 (2) IF A HEALTH MAINTENANCE ORGANIZATION USES ~~AN ECONOMIC A~~
28 PRACTICE PROFILE AS A FACTOR IN ITS ~~PEER REVIEW, QUALITY ASSURANCE,~~
29 ~~CONTRACT REVIEW, OR OTHER PROVIDER REVIEW PROGRAM TO EVALUATE THE~~
30 ~~PROVIDER TO EVALUATE A PROVIDER'S STATUS ON A PROVIDER PANEL,~~ THE
31 HEALTH MAINTENANCE ORGANIZATION SHALL DISCLOSE ~~AND PROVIDE TO A~~
32 ~~PROVIDER ON REQUEST:~~

33 ~~(I) THE DATA AND~~ AT THE COMMENCEMENT AND RENEWAL OF
34 THE CONTRACT AND, NOT MORE OFTEN THAN ANNUALLY, UPON THE REQUEST OF
35 THE PROVIDER;

36 (I) A DESCRIPTION OF THE CRITERIA USED TO COMPILE THE
37 ECONOMIC PRACTICE PROFILE CONCERNING THE PROVIDER; AND

38 (II) THE MANNER IN WHICH THE ~~ECONOMIC PRACTICE~~ PROFILE IS
39 USED TO EVALUATE THE PROVIDER.

6

1 (3) THE INFORMATION PROVIDED UNDER THIS SUBSECTION MAY NOT
2 BE USED TO CREATE A NEW CAUSE OF ACTION.

3 (4) A HEALTH MAINTENANCE ORGANIZATION MAY NOT TERMINATE A
4 PROVIDER CONTRACT OR THE PROVIDER'S EMPLOYMENT WITH THE HEALTH
5 MAINTENANCE ORGANIZATION ~~SOLELY~~ ON THE BASIS OF ~~AN ECONOMIC A~~
6 PRACTICE PROFILE WITHOUT FIRST INFORMING THE PROVIDER OF THE FINDINGS
7 OF THE ECONOMIC PRACTICE PROFILE PRIOR TO THE TERMINATION AND THE
8 PROVIDER SPECIFIC DATA UNDERLYING THOSE FINDINGS.

9 (S) A HEALTH MAINTENANCE ORGANIZATION MAY NOT BY CONTRACT, OR
10 IN ANY OTHER MANNER, REQUIRE A PROVIDER TO INDEMNIFY THE HEALTH
11 MAINTENANCE ORGANIZATION OR HOLD THE HEALTH MAINTENANCE
12 ORGANIZATION HARMLESS FROM ~~OR AGAINST ANY LIABILITY ARISING FROM~~
13 ~~COVERAGE DECISIONS MADE BY THE HEALTH MAINTENANCE ORGANIZATION OR~~
14 ~~FROM THE CONDUCT OF ANY OTHER PERSON OTHER THAN THE HEALTH CARE~~
15 ~~PROVIDER OR THE HEALTH CARE PROVIDER'S AGENTS OR EMPLOYEES A~~
16 COVERAGE DECISION OR NEGLIGENT ACT OF THE HEALTH MAINTENANCE
17 ORGANIZATION.

18 **Chapter 577 of the Acts of 1995**

19 SECTION 2. AND BE IT FURTHER ENACTED, That the Insurance
20 Commissioner, when developing [the uniform provider voucher form] the uniform
21 laboratory referral form[,] and the uniform consultation referral form under Article
22 48A, § 490BB of the Code, shall consult with the Department of Health and Mental
23 Hygiene, the Health Care Access and Cost Commission, the Office on Aging, Blue Cross
24 and Blue Shield of Maryland, Blue Cross and Blue Shield of the National Capital Area,
25 the Health Insurance Association of America, the League of Life and Health Insurers,
26 the Maryland Hospital Association, the Medical and Chirurgical Faculty of Maryland, the
27 Medical Group Management Association, a representative of the medical laboratory
28 industry in the State, the Maryland Association of Health Maintenance Organizations,
29 and a nonphysician health care provider association. The forms developed under this
30 section shall be capable of electronic transfer.

31 SECTION 3. AND BE IT FURTHER ENACTED, That the Insurance
32 Commissioner, when developing the forms in accordance with the requirements of
33 Section 2 of this Act, shall assess any existing uniformity of forms currently being used
34 within the health care delivery and finance industries, and shall examine any uniformity of
35 forms that may be required in other states. IN ADDITION TO THE REQUIREMENTS OF
36 SECTION 2 OF THIS ACT, THE INSURANCE COMMISSIONER, IN CONSULTATION WITH
37 THE REPRESENTATIVES OF THE AGENCIES, ASSOCIATIONS, AND ORGANIZATIONS
38 DESCRIBED UNDER SECTION 2 OF THIS ACT, SHALL STUDY THE FEASIBILITY OF A
39 UNIFORM VOUCHER FORM FOR HEALTH CARE PROVIDERS.

40 SECTION 2. AND BE IT FURTHER ENACTED, That:

41 (a) There is a Task Force to Study Patient and Provider Appeal and
42 Grievance Mechanisms;

43 (b) The Task Force shall consist of the following members:

7

1 ~~(1) Five representatives of the Medical and Chirurgical Faculty of~~
2 ~~Maryland, of whom two shall be nonphysician licensed health care providers;~~

3 ~~(2) Five representatives of the insurance industry, appointed by the~~
4 ~~Maryland Association of Health Maintenance Organizations;~~

5 ~~(3) Three members of the House Economic Matters Committee,~~
6 ~~appointed by the Speaker of the Maryland House of Delegates; and~~

7 ~~(4) Three members of the Senate Finance Committee, appointed by~~
8 ~~the President of the Senate of Maryland;~~

9 ~~(e) From among the members of the Task Force from the House of~~
10 ~~Delegates and the Senate of Maryland, one shall be designated the House Chairman and~~
11 ~~one shall be designated the Senate Chairman;~~

12 (1) Three representatives of the medical and chirurgical faculty of
13 Maryland, of whom one shall be a nonphysician licensed health care provider, appointed
14 by the Governor;

15 (2) Three representatives of Maryland health maintenance
16 organizations, appointed by the Governor;

17 (3) Three representatives of the House Economic Matters Committee,
18 appointed by the Speaker of the Maryland House of Delegates;

19 (4) Three representatives of the Senate Finance Committee,
20 appointed by the President of the Senate of Maryland;

21 (c) From among the members of the Task Force, the Governor shall
22 designate a chairman of the Task Force;

23 (d) The members of the Task Force shall serve without compensation;

24 (e) The Task Force shall:

25 (1) Evaluate the use and effectiveness of patient and provider
26 grievance and appeal mechanisms currently in law that are used to appeal decisions of
27 health maintenance organizations, ~~including appeal decisions related to enrollee or~~
28 ~~subscriber coverage, provider contract termination, and reimbursement determinations;~~
29 and

30 (2) Based on the evaluation conducted, make recommendations
31 concerning:

32 (i) The use and effectiveness of these appeal mechanisms; and

33 (ii) The need for legislative action; and

34 (f) On or before October 15, 1996, the House Chairman of the Task Force
35 shall report the recommendations of the Task Force to the House Economic Matters
36 Committee and the Senate Chairman of the Task Force shall report the recommendations
37 of the Task Force to the Senate Finance Committee.

1 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
2 take effect June 1, 1996.

3 SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
4 take effect October 1, 1996.