
By: Chairman, Finance Committee (Departmental - Health and Mental Hygiene)

Requested: October 7, 1996

Introduced and read first time: January 8, 1997

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 Maryland Health Care Access and Cost Commission - Modifications and Clarifications

3 FOR the purpose of delaying the implementation of the health care practitioner payment
4 system until a certain date; defining the term "self-employed" to include certain
5 incorporated individuals for the purpose of determining eligibility for the
6 Comprehensive Standard Health Benefit Plan; providing for the repeal of certain
7 abrogation dates; and generally relating to the Maryland Health Care Access and
8 Cost Commission.

9 BY repealing and reenacting, without amendments,
10 Article - Health - General
11 Section 19-1501, 19-1509(a), and 19-1515
12 Annotated Code of Maryland
13 (1996 Replacement Volume and 1996 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article - Health - General
16 Section 19-1509(b)
17 Annotated Code of Maryland
18 (1996 Replacement Volume and 1996 Supplement)

19 BY repealing and reenacting, without amendments,
20 Article 48A - Insurance Code
21 Section 490R
22 Annotated Code of Maryland
23 (1994 Replacement Volume and 1996 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article 48A - Insurance Code
26 Section 698(q)
27 Annotated Code of Maryland
28 (1994 Replacement Volume and 1996 Supplement)

29 BY repealing and reenacting, without amendments,

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1 Article - Insurance
2 Section 15-111
3 Annotated Code of Maryland
4 (1995 Volume and 1996 Supplement)
5 (As enacted by Chapter _____ (H.B. 11) of the Acts of the General Assembly of
6 1997)

7 BY repealing and reenacting, with amendments,

8 Article - Insurance
9 Section 15-1203
10 Annotated Code of Maryland
11 (1995 Volume and 1996 Supplement)
12 (As enacted by Chapter _____ (H.B. 11) of the Acts of the General Assembly of
13 1997)

14 BY repealing and reenacting, with amendments,

15 Chapter 462 of the Acts of the General Assembly of 1995
16 Section 3

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

19 **Article - Health - General**

20 19-1501.

21 (a) In this subtitle the following words have the meanings indicated.

22 (b) "Commission" means the Maryland Health Care Access and Cost
23 Commission.

24 (c) "Comprehensive standard health benefit plan" means the comprehensive
25 standard health benefit plan adopted in accordance with Article 48A, § 700 of the Code.

26 (d) (1) "Health care provider" means:

27 (i) A person who is licensed, certified, or otherwise authorized under
28 the Health Occupations Article to provide health care in the ordinary course of business
29 or practice of a profession or in an approved education or training program; or

30 (ii) A facility where health care is provided to patients or recipients,
31 including a facility as defined in § 10-101(e) of this article, a hospital as defined in §
32 19-301(f) of this article, a related institution as defined in § 19-301(l) of this article, a
33 health maintenance organization as defined in § 19-701(e) of this article, an outpatient
34 clinic, and a medical laboratory.

35 (2) "Health care provider" includes the agents and employees of a facility
36 who are licensed or otherwise authorized to provide health care, the officers and directors
37 of a facility, and the agents and employees of a health care provider who are licensed or
38 otherwise authorized to provide health care.

3

1 (e) "Health care practitioner" means any person that provides health care
2 services and is licensed under the Health Occupations Article.

3 (f) "Health care service" means any health or medical care procedure or service
4 rendered by a health care practitioner that:

5 (1) Provides testing, diagnosis, or treatment of human disease or
6 dysfunction; or

7 (2) Dispenses drugs, medical devices, medical appliances, or medical goods
8 for the treatment of human disease or dysfunction.

9 (g) (1) "Office facility" means the office of one or more health care
10 practitioners in which health care services are provided to individuals.

11 (2) "Office facility" includes a facility that provides:

12 (i) Ambulatory surgery;

13 (ii) Radiological or diagnostic imagery; or

14 (iii) Laboratory services.

15 (3) "Office facility" does not include any office, facility, or service operated
16 by a hospital and regulated under Subtitle 2 of this title.

17 (h) "Payor" means:

18 (1) A health insurer or nonprofit health service plan that holds a certificate
19 of authority and provides health insurance policies or contracts in the State in accordance
20 with this article or Article 48A of the Code;

21 (2) A health maintenance organization that holds a certificate of authority
22 in the State; or

23 (3) A third party administrator as defined in Article 48A, § 490R of the
24 Code.

25 19-1509.

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

27 (2) "Code" means the applicable current procedural terminology (CPT)
28 code as adopted by the American Medical Association or other applicable code under an
29 appropriate uniform coding scheme approved by the Commission.

30 (3) "Payor" means:

31 (i) A health insurer or nonprofit health service plan that holds a
32 certificate of authority and provides health insurance policies or contracts in the State in
33 accordance with Article 48A of the Code or the Health - General Article;

34 (ii) A health maintenance organization that holds a certificate of
35 authority.

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1 (4) "Unbundling" means the use of two or more codes by a health care
2 provider to describe a surgery or service provided to a patient when a single, more
3 comprehensive code exists that accurately describes the entire surgery or service.

4 (b) (1) By January 1, [1997] 1999, the Commission shall implement a payment
5 system for all health care practitioners in the State.

6 (2) The payment system established under this section shall include a
7 methodology for a uniform system of health care practitioner reimbursement.

8 (3) Under the payment system, reimbursement for each health care
9 practitioner shall be comprised of the following numeric factors:

10 (i) A numeric factor representing the resources of the health care
11 practitioner necessary to provide health care services;

12 (ii) A numeric factor representing the relative value of a health care
13 service, as classified by a code, compared to that of other health care services; and

14 (iii) A numeric factor representing a conversion modifier used to adjust
15 reimbursement.

16 (4) To prevent overpayment of claims for surgery or services, in developing
17 the payment system under this section, the Commission, to the extent practicable, shall
18 establish standards to prohibit the unbundling of codes and the use of reimbursement
19 maximization programs, commonly known as "upcoding".

20 (5) In developing the payment system under this section, the Commission
21 shall consider the underlying methodology used in the resource based relative value scale
22 established under 42 U.S.C. § 1395w-4.

23 (6) The Commission and the licensing boards shall develop, by regulation,
24 appropriate sanctions, including, where appropriate, notification to the Insurance Fraud
25 Unit of the State, for health care practitioners who violate the standards established by
26 the Commission to prohibit unbundling and upcoding.

27 19-1515.

28 (a) (1) The Commission shall assess a fee on:

29 (i) All payors; and

30 (ii) All health care practitioners.

31 (2) (i) The total fees assessed by the Commission shall be derived
32 one-third from health care practitioners and two-thirds from payors.

33 (ii) The Commission may adopt a regulation that waives the fee
34 assessed under this section for a specific class of health care practitioners.

35 (3) The total fees assessed by the Commission may not exceed \$5,000,000 in
36 any fiscal year.

37 (4) The Commission shall pay all funds collected from fees assessed in
38 accordance with this section into the Health Care Access and Cost Fund.

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1 (5) The fees assessed in accordance with this section shall be used only for
2 the purposes authorized under this subtitle.

3 (b) The fees assessed in accordance with this section on health care practitioners
4 shall be:

5 (1) Included in the licensing fee paid to the Board; and

6 (2) Transferred to the Commission on a quarterly basis.

7 (c) (1) The fees assessed on payors in accordance with Article 48A, § 490R of
8 the Code shall be apportioned among each payor based on the ratio of each such payor's
9 total premiums collected in the State to the total collected premiums of all such payors in
10 the State.

11 (2) On or before June 1 of each year, the Commission shall notify the State
12 Insurance Commissioner by memorandum of the total assessment on payors for that year.

13 (d) (1) There is a Health Care Access and Cost Fund.

14 (2) The Fund is a special continuing, nonlapsing fund that is not subject to
15 § 7-302 of the State Finance and Procurement Article.

16 (3) The Treasurer shall separately hold, and the Comptroller shall account
17 for, the Fund.

18 (4) The Fund shall be invested and reinvested in the same manner as other
19 State funds.

20 (5) Any investment earnings shall be retained to the credit of the Fund.

21 (6) The Fund shall be subject to an audit by the Office of Legislative Audits
22 as provided for in § 2-1215 of the State Government Article.

23 (7) This section may not be construed to prohibit the Fund from receiving
24 funds from any other source.

25 (8) The Fund shall be used only to provide funding for the Commission and
26 for the purposes authorized under this subtitle.

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

29 **Article - 48A - Insurance Code**

30 490R.

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

32 (2) "Health benefit plan" has the meaning stated in § 698 of this article.

33 (3) "Payor" means:

34 (i) A health insurer or nonprofit health service plan that holds a
35 certificate of authority and provides health insurance policies or contracts in this State
36 under this article;

6

1 (ii) A health maintenance organization that is licensed to operate in
2 the State; or

3 (iii) A third party administrator.

4 (4) "Third party administrator" means any person registered as an
5 administrator under this article.

6 (b) (1) On or before June 30 of each year, the Commissioner shall assess each
7 payor a fee for the upcoming fiscal year established in accordance with the provisions of
8 this section and § 19-1515 of the Health - General Article.

9 (2) For each fiscal year, the total assessment for all payors shall be:

10 (i) Set by a memorandum from the Maryland Health Care Access and
11 Cost Commission; and

12 (ii) Apportioned equitably by the Maryland Health Care Access and
13 Cost Commission between the classes of payors described under subsection (a)(3) of this
14 section as determined by the Maryland Health Care Access and Cost Commission.

15 (3) Of the total assessment apportioned under paragraph (2) of this
16 subsection to payors within the meaning of subsection (a)(3)(i) and (ii) of this section, the
17 Commissioner shall assess each such payor a fraction:

18 (i) The numerator of which is the payor's total premiums collected in
19 the State for health benefit plans for an appropriate prior 12-month period as
20 determined by the Commissioner; and

21 (ii) The denominator of which is the total premiums for health benefit
22 plans of all such payors collected in the State for the same period.

23 (4) Of the total assessment apportioned under paragraph (2) of this
24 subsection to payors within the meaning of subsection (a)(3)(iii) of this section, the
25 Commissioner shall assess each such payor a fraction:

26 (i) The numerator of which is one; and

27 (ii) The denominator of which is the total number of such payors.

28 (5) Notwithstanding any other provisions of this subsection, the fee assessed
29 on a third party administrator may not exceed 0.5% of the total administrative fees for
30 health benefit plans collected in the State by the third party administrator for the
31 previous calendar year.

32 (c) (1) Subject to paragraph (2) of this subsection, on or before September 1 of
33 each year, each payor assessed a fee in accordance with this section shall make payment
34 to the Commissioner.

35 (2) The Commissioner, in cooperation with the Maryland Health Care
36 Access and Cost Commission, may make provisions for partial payments.

7

1 (d) The Commissioner shall distribute the fees collected under this section to the
2 Health Care Access and Cost Fund established under § 19-1515 of the Health - General
3 Article.

4 (e) All payors shall cooperate fully in submitting reports and claims data and
5 providing any other information to the Maryland Health Care Access and Cost
6 Commission in accordance with Title 19, Subtitle 15 of the Health - General Article.

7 (f) The Commissioner shall report to the Maryland Health Care Access and Cost
8 Commission in a timely manner the names and addresses of each payor assessed and the
9 amount of each assessment.

10 (g) In making payments for health care services, all payors shall pay in accordance
11 with the payment system adopted under § 19-1509 of the Health - General Article.

12 698.

13 (q) (1) "Small employer" means:

14 (i) Any person, sole proprietor, firm, corporation, partnership, or
15 association actively engaged in business if:

16 1. On at least 50 percent of its working days during the
17 preceding calendar year, employed at least two but no more than 50 eligible employees;
18 and

19 2. The majority of the individuals described under item 1 of this
20 subparagraph are employed within the State; or

21 (ii) Any self-employed individual who:

22 1. Is an individual or sole proprietor who derives a substantial
23 portion of the individual's income from a trade or business through which the individual
24 or sole proprietor has attempted to earn taxable income and for which the individual has
25 filed the appropriate Internal Revenue Form 1040, Schedule C or F, for the previous
26 taxable year, a copy of which shall be filed with the carrier as proof of employment; [or]

27 2. Is an individual engaged in a licensed profession through a
28 professional corporation organized in accordance with Title 5, Subtitle 1 of the
29 Corporations and Associations Article and who received health benefits through a
30 professional association prior to July 1, 1994; OR

31 3. IS A SOLE EMPLOYEE OF A CORPORATION WHO DERIVES
32 A SUBSTANTIAL PORTION OF THE INDIVIDUAL'S INCOME FROM THE CORPORATION
33 THROUGH WHICH THE INDIVIDUAL HAS ATTEMPTED TO EARN TAXABLE INCOME
34 AND FOR WHICH THE CORPORATION HAS FILED THE APPROPRIATE INTERNAL
35 REVENUE FORM.

36 (2) "Small employer" includes:

37 (i) If the requirements of paragraph (1)(i)1 and 2 of this subsection
38 are satisfied, a local government body of:

39 1. A charter county established under Article 25A of the Code;

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- 1 2. A code county established under Article 25B of the Code;
- 2 3. A board of county commissioners established or operating
- 3 under Article 25 of the Code; and
- 4 4. A municipal corporation established or operating under
- 5 Article 23A of the Code; and

6 (ii) A nonprofit organization, which has been determined by the
7 Internal Revenue Service to be exempt from taxation under § 501(c)(3), (4), or (6) of the
8 Internal Revenue Code, with at least one eligible employee.

9 (3) (i) A carrier may not impose a minimum participation requirement
10 for a small employer that is greater than 75 percent of eligible employees of the small
11 employer.

12 (ii) In applying minimum participation requirements with respect to a
13 small employer to determine whether the applicable percentage of participation is met, a
14 carrier may not consider eligible employees or dependents that have coverage under a
15 public or private health insurance plan or other health benefit arrangement, including
16 Medicare, Medicaid, and CHAMPUS, that provides benefits similar to or exceeding the
17 benefits provided under the comprehensive standard benefit plan.

18 (4) If the federal Employee Retirement Income Security Act is amended to
19 exclude employee groups under a specific size, notwithstanding paragraph (1)(i) of this
20 subsection, this subtitle shall apply to any employee group size that is excluded from that
21 federal Act.

22 (5) In determining the number of eligible employees who meet the
23 requirements under paragraph (1)(i) of this subsection, companies which are affiliated
24 companies or which are eligible to file a consolidated federal income tax return shall be
25 considered one employer.

26 (6) In determining the number of eligible employees who meet the
27 requirements under paragraph (1)(i) of this subsection, an employee may not be counted
28 who:

29 (i) Is otherwise covered under a public or private health insurance
30 plan or other health benefit arrangement; or

31 (ii) Is a part-time employee.

32 (7) Notwithstanding the provisions of paragraph (1)(i) of this subsection, in
33 otherwise satisfying the requirements of paragraph (1)(i) of this subsection, a small
34 employer that did not exist during the preceding calendar year shall, during its first year,
35 employ on at least 50 percent of its working days at least two but no more than 50 eligible
36 employees.

37 (8) Notwithstanding paragraph (6)(i) of this subsection, in otherwise
38 satisfying the requirements of paragraph (1)(i) of this subsection, a small employer is
39 eligible to be offered coverage by a carrier under this subtitle if:

9

1 (i) All but one of the eligible employees of the small employer are
2 covered under another public or private health benefit plan or other health benefit
3 arrangement; and

4 (ii) Only one eligible employee of the small employer is not covered
5 under any public or private health benefit plan or other health benefit arrangement.

6 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
7 read as follows:

8 **Article - Insurance**

9 15-111.

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

11 (2) "Health benefit plan" has the meaning stated in § 15-1201 of this title.

12 (3) "Payor" means:

13 (i) a health insurer or nonprofit health service plan that holds a
14 certificate of authority and provides health insurance policies or contracts in the State
15 under this article;

16 (ii) a health maintenance organization that is authorized by the
17 Commissioner to operate in the State; or

18 (iii) a third party administrator.

19 (4) "Third party administrator" means a person that is registered as an
20 administrator under this article.

21 (b) (1) On or before June 30 of each year, the Commissioner shall assess each
22 payor a fee for the next fiscal year.

23 (2) The fee shall be established in accordance with this section and §
24 19-1515 of the Health - General Article.

25 (c) (1) For each fiscal year, the total assessment for all payors shall be:

26 (i) set by a memorandum from the Maryland Health Care Access and
27 Cost Commission; and

28 (ii) apportioned equitably by the Maryland Health Care Access and
29 Cost Commission among the classes of payors described in subsection (a)(3) of this
30 section as determined by the Maryland Health Care Access and Cost Commission.

31 (2) Of the total assessment apportioned under paragraph (1) of this
32 subsection to payors described in subsection (a)(3)(i) and (ii) of this section, the
33 Commissioner shall assess each payor a fraction:

34 (i) the numerator of which is the payor's total premiums collected in
35 the State for health benefit plans for an appropriate prior 12-month period as
36 determined by the Commissioner; and

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1 (ii) the denominator of which is the total premiums collected in the
2 State for the same period for health benefit plans of all payors described in subsection
3 (a)(3)(i) and (ii) of this section.

4 (3) Of the total assessment apportioned under paragraph (1) of this
5 subsection to payors described in subsection (a)(3)(iii) of this section, the Commissioner
6 shall assess each payor a fraction:

7 (i) the numerator of which is one; and

8 (ii) the denominator of which is the total number of all payors
9 described in subsection (a)(3)(iii) of this section.

10 (4) Notwithstanding any other provision of this subsection, the fee assessed
11 on a third party administrator may not exceed 0.5% of the total administrative fees for
12 health benefit plans collected in the State by the third party administrator for the
13 previous calendar year.

14 (d) (1) Subject to paragraph (2) of this subsection, each payor that is assessed a
15 fee under this section shall pay the fee to the Commissioner on or before September 1 of
16 each year.

17 (2) The Commissioner, in cooperation with the Maryland Health Care
18 Access and Cost Commission, may provide for partial payments.

19 (e) The Commissioner shall distribute the fees collected under this section to the
20 Health Care Access and Cost Fund established under § 19-1515 of the Health - General
21 Article.

22 (f) Each payor shall cooperate fully in submitting reports and claims data and
23 providing any other information to the Maryland Health Care Access and Cost
24 Commission in accordance with Title 19, Subtitle 15 of the Health - General Article.

25 (g) The Commissioner shall report to the Maryland Health Care Access and Cost
26 Commission in a timely manner the name and address of each payor that is assessed a fee
27 under this section and the amount of the assessment.

28 (h) Each payor shall pay for health care services in accordance with the payment
29 system adopted under § 19-1509 of the Health - General Article.

30 15-1203.

31 (a) A small employer under this subtitle is a person that meets the criteria
32 specified in any subsection of this section.

33 (b) (1) A person is considered a small employer under this subtitle if the
34 person:

35 (i) is an employer that on at least 50% of its working days during the
36 preceding calendar year, employed at least two but not more than 50 eligible employees,
37 the majority of whom are employed in the State; and

38 (ii) is a person actively engaged in business or is the governing body of:

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- 1 1. a charter home-rule county established under Article XI-A
2 of the Maryland Constitution;
- 3 2. a code home-rule county established under Article XI-F of
4 the Maryland Constitution;
- 5 3. a commission county established or operating under Article
6 25 of the Code; or
- 7 4. a municipal corporation established or operating under
8 Article XI-E of the Maryland Constitution.

9 (2) Notwithstanding paragraph (1)(i) of this subsection:

10 (i) a person is considered a small employer under this subtitle if the
11 employer did not exist during the preceding calendar year but on at least 50% of the
12 working days during its first year the employer employs at least two but not more than 50
13 eligible employees and otherwise satisfies the conditions of paragraph (1)(i) of this
14 subsection; and

15 (ii) if the federal Employee Retirement Income Security Act (ERISA)
16 is amended to exclude employee groups under a specific size, this subtitle shall apply to
17 any employee group size that is excluded from that Act.

18 (3) In determining the group size specified under paragraph (1)(i) of this
19 subsection:

20 (i) companies that are affiliated companies or that are eligible to file
21 a consolidated federal income tax return shall be considered one employer; and

22 (ii) an employee may not be counted who is:

23 1. otherwise covered under a public or private health insurance
24 plan or other health benefit arrangement; or

25 2. a part-time employee as described in § 15-1210(a)(1)(ii) of
26 this subtitle.

27 (c) An individual is considered a small employer under this subtitle if the
28 individual is a self-employed individual or sole proprietorship:

29 (1) a substantial part of whose income derives from a trade or business
30 through which the individual has attempted to earn taxable income;

31 (2) who has filed the appropriate Internal Revenue Form 1040, Schedule C
32 or F, for the previous taxable year; and

33 (3) for whom a copy of the Internal Revenue form has been filed with the
34 carrier as proof of employment.

35 (d) An individual is considered a small employer under this subtitle if the
36 individual is a self-employed individual who is engaged in a licensed profession through a
37 professional corporation organized in accordance with Title 5, Subtitle 1 of the

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1 Corporations and Associations Article and who received health benefits through a
2 professional association on or before June 30, 1994.

3 (E) AN INDIVIDUAL IS CONSIDERED A SMALL EMPLOYER UNDER THIS
4 SUBTITLE IF THE INDIVIDUAL IS A SELF-EMPLOYED INDIVIDUAL WHO IS A SOLE
5 EMPLOYEE OF A CORPORATION:

6 (1) A SUBSTANTIAL PORTION OF WHOSE INCOME DERIVES FROM THE
7 CORPORATION THROUGH WHICH THE INDIVIDUAL HAS ATTEMPTED TO EARN
8 TAXABLE INCOME; AND

9 (2) FOR WHOM THE CORPORATION HAS FILED THE APPROPRIATE
10 INTERNAL REVENUE FORM.

11 [(e)] (F) A person is considered a small employer under this subtitle if the person
12 is a nonprofit organization that has been determined by the Internal Revenue Service to
13 be exempt from taxation under § 501(c)(3), (4), or (6) of the Internal Revenue Code and
14 has at least one eligible employee.

15 [(f)] (G) Notwithstanding subsection (b)(3)(ii)1 of this section, in otherwise
16 satisfying the requirements of subsection (b)(1) of this section, a person is considered a
17 small employer under this subtitle if:

18 (1) all but one of its eligible employees are covered under another public or
19 private health benefit plan or other health benefit arrangement; and

20 (2) only one of its eligible employees is not covered under any public or
21 private health benefit plan or other health benefit arrangement.

22 SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland
23 read as follows:

24 **Chapter 462 of the Acts of 1995**

25 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 June 1, 1995. [It shall remain effective for a period of three years and, at the end of May
27 31, 1998, with no further action required by the General Assembly, this Act shall be
28 abrogated and of no further force and effect.]

29 SECTION 5. AND BE IT FURTHER ENACTED, That:

30 (1) Due to the rapid changes the health care market is experiencing, prior to
31 implementation, the Maryland Health Care Access and Cost Commission shall evaluate
32 the goals of a statewide payment system and the appropriateness of the payment system
33 mandated in § 19-1509 of the Health - General Article to achieving these goals; and

34 (2) The Maryland Health Care Access and Cost Commission shall report its
35 findings and recommendations to the Senate Finance Committee and the House
36 Environmental Matters Committee on or before August 1, 1997.

37 SECTION 6. AND BE IT FURTHER ENACTED, That, except for Section 3 of
38 this Act, this Act shall take effect July 1, 1997.

1 SECTION 7. AND BE IT FURTHER ENACTED, That Section 3 of this Act
2 shall take effect October 1, 1997.