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By: **Chairman, Economic Matters Committee (Departmental - Insurance Administration, Maryland)**

Introduced and read first time: January 27, 1999

Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Health Insurance - Penalties and Unfair Claims Settlement Practices**

3 FOR the purpose of authorizing the Insurance Commissioner to impose certain  
4 penalties against health maintenance organizations under certain  
5 circumstances; providing that certain acts and omissions by an insurer or  
6 nonprofit health service plan are unfair claims settlement practices; providing  
7 for the application of this Act; and generally relating to unfair claims settlement  
8 practices by insurers and nonprofit health service plans and penalties that may  
9 be imposed on health maintenance organizations.

10 BY repealing and reenacting, without amendments,  
11 Article - Health - General  
12 Section 19-728(a), 19-729, and 19-732  
13 Annotated Code of Maryland  
14 (1996 Replacement Volume and 1998 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Article - Health - General  
17 Section 19-730, 19-731, and 19-733  
18 Annotated Code of Maryland  
19 (1996 Replacement Volume and 1998 Supplement)

20 BY repealing and reenacting, without amendments,  
21 Article - Insurance  
22 Section 4-113(d) and 27-305  
23 Annotated Code of Maryland  
24 (1997 Volume and 1998 Supplement)

25 BY repealing and reenacting, with amendments,  
26 Article - Insurance  
27 Section 27-304  
28 Annotated Code of Maryland

1 (1997 Volume and 1998 Supplement)

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

4 **Article - Health - General**

5 19-728.

6 (a) If, as to a matter that is within the jurisdiction of the Department under  
7 this subtitle, the Secretary finds that a health maintenance organization does not  
8 meet the requirements of this subtitle or the rules and regulations adopted under it  
9 and cannot or will not make corrective changes or new arrangements to meet these  
10 requirements, the Secretary may send to the Commissioner a written directive that  
11 sets out the findings of the Secretary and reasons for them and directs the  
12 Commissioner to suspend or revoke the certificate of authority of the health  
13 maintenance organization or to take any other appropriate action that the Secretary  
14 specifies. The Commissioner shall comply with the directive.

15 19-729.

16 (a) A health maintenance organization may not:

17 (1) Violate any provision of this subtitle or any rule or regulation  
18 adopted under it;

19 (2) Fail to fulfill its obligations to provide the health care services  
20 specified in its contracts with subscribers;

21 (3) Make any false statement with respect to any report or statement  
22 required by this subtitle or by the Commissioner under this subtitle;

23 (4) Advertise, merchandise, or attempt to merchandise its services in a  
24 way that misrepresents its services or capacity for service;

25 (5) Engage in a deceptive, misleading, unfair, or unauthorized practice  
26 as to advertising or merchandising;

27 (6) Prevent or attempt to prevent the Commissioner or the Department  
28 from performing any duty imposed by this subtitle;

29 (7) Fraudulently obtain or fraudulently attempt to obtain any benefit  
30 under this subtitle;

31 (8) Fail to fulfill the basic requirements to operate as a health  
32 maintenance organization as provided in § 19-710 of this subtitle;

33 (9) Violate any applicable provision of Title 15, Subtitle 12 of the  
34 Insurance Article;

1 (10) Fail to provide services to a member in a timely manner as provided  
2 in § 19-705.1(b)(1) of this subtitle;

3 (11) Fail to comply with the provisions of Title 15, Subtitle 10A, 10B, or  
4 10C or § 2-112.2 of the Insurance Article; or

5 (12) Violate any provision of § 19-712.5 of this subtitle.

6 (b) If any health maintenance organization violates this section, the  
7 Commissioner may pursue any one or more of the courses of action described in §  
8 19-730 of this subtitle.

9 19-730.

10 If any person violates any provision of § 19-729 of this subtitle, the  
11 Commissioner may:

12 (1) Issue an administrative order that requires the health maintenance  
13 organization to:

14 (i) Cease inappropriate conduct or practices by it or any of the  
15 personnel employed or associated with it;

16 (ii) Fulfill its contractual obligations;

17 (iii) Provide a service that has been denied improperly;

18 (iv) Take appropriate steps to restore its ability to provide a service  
19 that is provided under a contract;

20 (v) Cease the enrollment of any additional enrollees except  
21 newborn children or other newly acquired dependents or existing enrollees; or

22 (vi) Cease any advertising or solicitation;

23 (2) Impose a penalty of not more than \$5,000 for each unlawful act  
24 committed;

25 (3) IMPOSE ANY PENALTY THAT COULD BE IMPOSED ON AN INSURER  
26 UNDER § 4-113(D) OF THE INSURANCE ARTICLE;

27 [(3)] (4) Suspend or revoke the certificate of authority to do business as  
28 a health maintenance organization; or

29 [(4)] (5) Apply to any court for legal or equitable relief considered  
30 appropriate by the Commissioner or the Department, in accordance with the joint  
31 internal procedures.

1 19-731.

2 (a) Before the Commissioner or the Department takes any action under §  
3 19-728(a)[, § 19-729, or § 19-730] of this subtitle, the Commissioner shall give a  
4 written notice to the health maintenance organization or its agent or to the officer of  
5 the organization who is accused of violating the law, that states specifically the  
6 nature of the alleged violation and sets a time, place, and date that a hearing of the  
7 matter will be held. The hearing date may not be less than 10 days after the notice.

8 (b) After the hearing or on failure of the accused to appear at the hearing, and  
9 in accordance with rules and regulations adopted under this subtitle, the  
10 Commissioner may impose any of the penalties described in § 19-730 of this subtitle  
11 that the Commissioner considers advisable.

12 19-732.

13 If the Department takes action under § 19-728(a) of this subtitle that obligates  
14 the Commissioner to take action in any of the ways provided by §§ 19-729 through  
15 19-731 of this subtitle, the aggrieved party, insofar as the appeal relates to the action  
16 of the Department, may:

17 (1) Appeal that decision to the Board of Review of the Department; and

18 (2) Then take any further appeal allowed by the Administrative  
19 Procedure Act.

20 19-733.

21 [Any] EXCEPT AS OTHERWISE PROVIDED UNDER § 19-732 OF THIS SUBTITLE,  
22 ANY party aggrieved by a final action of the Commissioner under this subtitle has the  
23 right to a hearing and the right to appeal from the action of the Commissioner under  
24 §§ 2-210 through 2-215 of the Insurance Article.

25 **Article - Insurance**

26 4-113.

27 (d) Instead of or in addition to suspending or revoking a certificate of  
28 authority, the Commissioner may:

29 (1) impose on the holder a penalty of not less than \$100 but not more  
30 than \$125,000 for each violation of this article; and

31 (2) require the holder to make restitution to any person who has suffered  
32 financial injury because of the violation of this article.

1 27-304.

2 It is an unfair claim settlement practice and a violation of this subtitle for an  
3 insurer or nonprofit health service plan, when committed with the frequency to  
4 indicate a general business practice, to:

5 (1) misrepresent pertinent facts or policy provisions that relate to the  
6 claim or coverage at issue;

7 (2) fail to acknowledge and act with reasonable promptness on  
8 communications about claims that arise under policies;

9 (3) fail to adopt and implement reasonable standards for the prompt  
10 investigation of claims that arise under policies;

11 (4) refuse to pay a claim without conducting a reasonable investigation  
12 based on all available information;

13 (5) fail to affirm or deny coverage of claims within a reasonable time  
14 after proof of loss statements have been completed;

15 (6) fail to make a prompt, fair, and equitable good faith attempt, to settle  
16 claims for which liability has become reasonably clear;

17 (7) compel insureds to institute litigation to recover amounts due under  
18 policies by offering substantially less than the amounts ultimately recovered in  
19 actions brought by the insureds;

20 (8) attempt to settle a claim for less than the amount to which a  
21 reasonable person would expect to be entitled after studying written or printed  
22 advertising material accompanying, or made part of, an application;

23 (9) attempt to settle a claim based on an application that is altered  
24 without notice to, or the knowledge or consent of, the insured;

25 (10) fail to include with each claim paid to an insured or beneficiary a  
26 statement of the coverage under which the payment is being made;

27 (11) make known to insureds or claimants a policy of appealing from  
28 arbitration awards in order to compel insureds or claimants to accept a settlement or  
29 compromise less than the amount awarded in arbitration;

30 (12) delay an investigation or payment of a claim by requiring a claimant  
31 or a claimant's licensed health care provider to submit a preliminary claim report and  
32 subsequently to submit formal proof of loss forms that contain substantially the same  
33 information;

34 (13) fail to settle a claim promptly whenever liability is reasonably clear  
35 under one part of a policy, in order to influence settlements under other parts of the  
36 policy;

1 (14) fail to provide promptly a reasonable explanation of the basis for  
2 denial of a claim or the offer of a compromise settlement;

3 (15) REFUSE TO PAY A CLAIM FOR AN ARBITRARY OR CAPRICIOUS  
4 REASON BASED ON ALL AVAILABLE INFORMATION;

5 [(15)] (16) fail to meet the requirements of Title 15, Subtitle 10B of this  
6 article for preauthorization for a health care service; or

7 [(16)] (17) fail to comply with the provisions of Title 15, Subtitle 10A of this  
8 article.

9 27-305.

10 (a) The Commissioner may impose a penalty not exceeding \$2,500 for each  
11 violation of § 27-303 of this subtitle or a regulation adopted under § 27-303 of this  
12 subtitle.

13 (b) The penalty for a violation of § 27-304 of this subtitle is as provided in §§  
14 1-301, 4-113, 4-114, and 27-103 of this article.

15 (c) (1) On finding a violation of this subtitle, the Commissioner may require  
16 an insurer or nonprofit health service plan to make restitution to each claimant who  
17 has suffered actual economic damage because of the violation.

18 (2) Restitution may not exceed the amount of actual economic damage  
19 sustained, subject to the limits of any applicable policy.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
21 construed only prospectively and may not be applied or interpreted to have any effect  
22 on or application to any order issued before the effective date of this Act.

23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take  
24 effect June 1, 1999.