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

Introduced and read first time: January 27, 1999

Assigned to: Economic Matters

Committee Report: Favorable

House action: Adopted

Read second time: February 24, 1999

CHAPTER _____

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

1 Annotated Code of Maryland
2 (1997 Volume and 1998 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article - Insurance
5 Section 27-304
6 Annotated Code of Maryland
7 (1997 Volume and 1998 Supplement)

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

10 **Article - Health - General**

11 19-728.

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

21 19-729.

22 (a) A health maintenance organization may not:

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

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

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

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

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

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

1 (7) Fraudulently obtain or fraudulently attempt to obtain any benefit
2 under this subtitle;

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

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

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

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

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

12 (b) If any health maintenance organization violates this section, the
13 Commissioner may pursue any one or more of the courses of action described in §
14 19-730 of this subtitle.

15 19-730.

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

18 (1) Issue an administrative order that requires the health maintenance
19 organization to:

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

22 (ii) Fulfill its contractual obligations;

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

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

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

28 (vi) Cease any advertising or solicitation;

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

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

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

3 27-304.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 [(15)] (16) fail to meet the requirements of Title 15, Subtitle 10B of this
9 article for preauthorization for a health care service; or

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

12 27-305.

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

16 (b) The penalty for a violation of § 27-304 of this subtitle is as provided in §§
17 1-301, 4-113, 4-114, and 27-103 of this article.

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

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

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

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