
By: **Delegate Hurson**

Introduced and read first time: February 12, 1999

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Insurance - Pharmaceutical Benefits - Patients' Rights**

3 FOR the purpose of requiring certain health insurance carriers to establish and
4 implement a procedure by which a member may receive a prescription drug that
5 is not in a carrier's formulary under certain circumstances; providing that a
6 member may not be required to pay any fee or copayment for the prescription
7 drug other than that required for a prescription drug in the carrier's formulary;
8 requiring certain health insurance carriers to give a certain notice to certain
9 members before substituting another prescription drug for a prescription drug
10 in its formulary under certain circumstances; prohibiting certain health
11 insurance carriers from limiting or excluding coverage for certain prescription
12 drugs under certain circumstances; requiring certain health insurance carriers
13 to provide coverage for certain new prescription drugs for a certain period of
14 time under certain circumstances; requiring the Maryland Health Care Access
15 and Cost Commission to develop and implement a certain rating system for
16 certain prescription drug coverage plans; requiring the Commission to establish
17 a certain consumer advisory panel to advise the Commission in developing and
18 implementing the rating system; specifying the composition of the panel;
19 requiring certain health insurance carriers to include certain information about
20 the rating system in any documents that describe a prescription drug coverage
21 plan offered by a carrier and that are provided to employers or members;
22 requiring certain health insurance carriers to include certain information in
23 certain documents provided to members; defining certain terms; providing for
24 the application of this Act; and generally relating to prescription drug coverage.

25 BY adding to

26 Article - Insurance

27 Section 15-126

28 Annotated Code of Maryland

29 (1997 Volume and 1998 Supplement)

30 BY adding to

31 Article - Health - General

32 Section 19-706(ff)

1 Annotated Code of Maryland
2 (1996 Replacement Volume and 1998 Supplement)

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

5 **Article - Insurance**

6 15-126.

7 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
8 INDICATED.

9 (2) "AUTHORIZED PRESCRIBER" HAS THE MEANING STATED IN § 12-101
10 OF THE HEALTH OCCUPATIONS ARTICLE.

11 (3) "FORMULARY" MEANS A LIST OF PRESCRIPTION DRUGS THAT ARE
12 COVERED BY AN ENTITY SUBJECT TO THIS SECTION.

13 (4) (I) "MEMBER" MEANS AN INDIVIDUAL ENTITLED TO HEALTH CARE
14 BENEFITS UNDER A POLICY OR CONTRACT DELIVERED OR ISSUED FOR DELIVERY IN
15 THE STATE BY AN ENTITY SUBJECT TO THIS SECTION.

16 (II) "MEMBER" INCLUDES A SUBSCRIBER.

17 (B) THIS SECTION APPLIES TO:

18 (1) INSURERS AND NONPROFIT HEALTH SERVICE PLANS THAT:

19 (I) PROVIDE COVERAGE FOR PRESCRIPTION DRUGS UNDER
20 HEALTH INSURANCE POLICIES OR CONTRACTS THAT ARE DELIVERED OR ISSUED
21 FOR DELIVERY IN THE STATE TO EMPLOYERS OR INDIVIDUALS ON A GROUP OR
22 INDIVIDUAL BASIS; AND

23 (II) LIMIT COVERAGE OF PRESCRIPTION DRUGS TO THOSE IN A
24 FORMULARY; AND

25 (2) HEALTH MAINTENANCE ORGANIZATIONS THAT:

26 (I) PROVIDE COVERAGE FOR PRESCRIPTION DRUGS UNDER
27 CONTRACTS THAT ARE DELIVERED OR ISSUED FOR DELIVERY IN THE STATE TO
28 EMPLOYERS OR INDIVIDUALS ON A GROUP OR INDIVIDUAL BASIS; AND

29 (II) LIMIT COVERAGE OF PRESCRIPTION DRUGS TO THOSE IN A
30 FORMULARY.

31 (C) (1) EACH ENTITY SUBJECT TO THIS SECTION SHALL ESTABLISH AND
32 IMPLEMENT A PROCEDURE BY WHICH A MEMBER MAY RECEIVE A PRESCRIPTION
33 DRUG THAT IS NOT IN A FORMULARY IF, IN THE JUDGMENT OF THE PHYSICIAN WHO

1 IS CARING FOR THE MEMBER, THE PRESCRIPTION DRUG IS MEDICALLY NECESSARY
2 BECAUSE THE FORMULARY DRUG:

3 (I) HAS BEEN INEFFECTIVE IN TREATING THE DISEASE OR
4 CONDITION OF THE MEMBER; OR

5 (II) HAS CAUSED OR IS LIKELY TO CAUSE AN ADVERSE REACTION
6 OR OTHER HARM TO THE MEMBER.

7 (2) A MEMBER WHO OBTAINS A PRESCRIPTION DRUG UNDER THIS
8 SUBSECTION MAY NOT BE REQUIRED TO PAY ANY FEE OR COPAYMENT OTHER THAN
9 THAT REQUIRED FOR A PRESCRIPTION DRUG IN THE FORMULARY.

10 (3) AN ENTITY SUBJECT TO THIS SECTION MAY NOT LIMIT THE RIGHT
11 OF A MEMBER WHO HAS A RECURRING DISEASE OR CONDITION TO OBTAIN A
12 PRESCRIPTION DRUG UNDER THIS SUBSECTION FOR TREATMENT OF THAT DISEASE
13 OR CONDITION.

14 (D) (1) AT LEAST 90 DAYS BEFORE SUBSTITUTING ANOTHER PRESCRIPTION
15 DRUG FOR A PRESCRIPTION DRUG IN ITS FORMULARY, AN ENTITY SUBJECT TO THIS
16 SECTION SHALL NOTIFY ANY MEMBER AFFECTED BY THE SUBSTITUTION, IF THE
17 SUBSTITUTION IS THE RESULT OF FINANCIAL INCENTIVES, INCLUDING REBATES,
18 OFFERED TO THE ENTITY.

19 (2) AN ENTITY SUBJECT TO THIS SECTION MAY NOT LIMIT OR EXCLUDE
20 COVERAGE FOR A PRESCRIPTION DRUG PRESCRIBED FOR A MEMBER IF:

21 (I) THE PRESCRIPTION DRUG WAS PRESCRIBED BY AN
22 AUTHORIZED PRESCRIBER FOR A DISEASE OR CONDITION OF THE MEMBER UNDER A
23 PRIOR HEALTH INSURANCE PLAN OF THE MEMBER'S EMPLOYER; AND

24 (II) AN AUTHORIZED PRESCRIBER CONTINUES TO PRESCRIBE THE
25 PRESCRIPTION DRUG FOR THE MEMBER FOR TREATMENT OF THAT DISEASE OR
26 CONDITION.

27 (E) (1) IF PRESCRIBED FOR A MEMBER BY AN AUTHORIZED PRESCRIBER, AN
28 ENTITY SUBJECT TO THIS SECTION SHALL PROVIDE COVERAGE FOR A NEW
29 PRESCRIPTION DRUG APPROVED BY THE FEDERAL FOOD AND DRUG
30 ADMINISTRATION FOR AT LEAST 1 YEAR FROM THE FIRST DAY OF SALE OF THE DRUG
31 AFTER APPROVAL BY THE ADMINISTRATION.

32 (2) THIS SUBSECTION DOES NOT APPLY TO EXPERIMENTAL DRUGS,
33 INVESTIGATIONAL DRUGS, PRESCRIPTIONS AND INJECTIONS FOR CENTRAL
34 NERVOUS SYSTEM STIMULANTS AND ANORECTIC AGENTS WHEN USED FOR WEIGHT
35 CONTROL, OR DRUGS USED FOR COSMETIC PURPOSES.

36 (F) (1) (I) THE MARYLAND HEALTH CARE ACCESS AND COST COMMISSION
37 SHALL DEVELOP AND IMPLEMENT A SYSTEM OF RATING THE PRESCRIPTION DRUG
38 COVERAGE PLANS OFFERED BY ENTITIES SUBJECT TO THIS SECTION TO ASSIST
39 EMPLOYERS AND CONSUMERS IN EVALUATING AND SELECTING A PLAN.

1 (II) THE COMMISSION SHALL ESTABLISH A CONSUMER ADVISORY
2 PANEL CONSISTING OF 12 MEMBERS TO ADVISE THE COMMISSION IN DEVELOPING
3 AND IMPLEMENTING THE RATING SYSTEM REQUIRED UNDER SUBPARAGRAPH (I) OF
4 THIS PARAGRAPH.

5 (III) THE PANEL SHALL CONSIST OF A REPRESENTATIVE OF:

- 6 1. THE NATIONAL COALITION FOR CANCER SURVIVORSHIP;
- 7 2. THE NATIONAL KIDNEY FOUNDATION;
- 8 3. THE MARYLAND MENTAL HEALTH ASSOCIATION;
- 9 4. THE AMERICAN DIABETES ASSOCIATION;
- 10 5. THE AMERICAN HEART ASSOCIATION;
- 11 6. THE AMERICAN LUNG ASSOCIATION;
- 12 7. THE ARTHRITIS FOUNDATION;
- 13 8. THE MEDICAL AND CHIRURGICAL FACULTY;
- 14 9. THE MARYLAND PHARMACISTS ASSOCIATION;
- 15 10. THE AMERICAN ACADEMY OF PEDIATRICS, MARYLAND
16 CHAPTER;
- 17 11. THE AMERICAN ACADEMY OF OBSTETRICIANS AND
18 GYNECOLOGISTS; AND
- 19 12. THE MARYLAND PATIENT ADVOCACY GROUP.

20 (2) AN ENTITY SUBJECT TO THIS SECTION, IN ANY DOCUMENTS THAT
21 DESCRIBE A PRESCRIPTION DRUG COVERAGE PLAN OFFERED BY THE ENTITY AND
22 THAT ARE PROVIDED TO AN EMPLOYER OR MEMBER, SHALL INCLUDE:

23 (I) IN THE UPPER LEFT-HAND CORNER OF THE FIRST PAGE OF
24 EACH DOCUMENT, THE RATING DESIGNATION ASSIGNED TO THE PLAN BY THE
25 COMMISSION; AND

26 (II) AN EXPLANATION OF THE RATING SYSTEM AND THE RATING
27 DESIGNATION ASSIGNED TO THE PLAN.

28 (G) AN ENTITY SUBJECT TO THIS SECTION SHALL INCLUDE, IN THE POLICY,
29 PLAN, CERTIFICATE, ENROLLMENT MATERIALS, OR OTHER EVIDENCE OF COVERAGE
30 THAT THE ENTITY PROVIDES TO A MEMBER AT THE TIME OF THE MEMBER'S INITIAL
31 COVERAGE OR RENEWAL OF COVERAGE, THE FOLLOWING:

1 (1) A NOTICE THAT THE ENTITY USES A FORMULARY AND AN
2 EXPLANATION OF WHAT A FORMULARY IS AND HOW THE ENTITY DETERMINES
3 WHICH PRESCRIPTION DRUGS ARE INCLUDED OR EXCLUDED;

4 (2) THE PROCEDURE FOR OBTAINING A COPY OF THE FORMULARY USED
5 BY THE ENTITY;

6 (3) A STATEMENT OF A MEMBER'S RIGHTS UNDER SUBSECTIONS (C), (D),
7 AND (E) OF THIS SECTION; AND

8 (4) THE PROCEDURE FOR FILING A COMPLAINT WITH THE ENTITY IN
9 THE EVENT OF A DENIAL OF COVERAGE.

10 **Article - Health - General**

11 19-706.

12 (FF) THE PROVISIONS OF § 15-126 OF THE INSURANCE ARTICLE SHALL APPLY
13 TO HEALTH MAINTENANCE ORGANIZATIONS.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all
15 policies, contracts, and health benefit plans issued, delivered, or renewed in the State
16 on or after October 1, 1999.

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 1999.