
By: **Delegate Hurson**
Introduced and read first time: February 12, 1999
Assigned to: Economic Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 26, 1999

CHAPTER _____

1 AN ACT concerning

2 **Insurance—Pharmaceutical Benefits—Patients' Rights**
3 **Health Maintenance Organizations - Formulary Development Process -**
4 **Accreditation Status**

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

1 process of certain health maintenance organizations meets certain accreditation
 2 standards; making a certain stylistic change; and generally relating to the
 3 publication of quality of care and performance measurements of health
 4 maintenance organizations.

5 ~~BY adding to~~
 6 ~~Article - Insurance~~
 7 ~~Section 15-126~~
 8 ~~Annotated Code of Maryland~~
 9 ~~(1997 Volume and 1998 Supplement)~~

10 ~~BY adding to~~
 11 ~~Article - Health - General~~
 12 ~~Section 19-706(ff)~~
 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 19-1508(c)
 18 Annotated Code of Maryland
 19 (1996 Replacement Volume and 1998 Supplement)

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

22 **Article - Insurance**

23 ~~15-126.~~

24 ~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS~~
 25 ~~INDICATED.~~

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

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

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

33 ~~(II) "MEMBER" INCLUDES A SUBSCRIBER.~~

34 ~~(B) THIS SECTION APPLIES TO:~~

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

2 (1) ~~PROVIDE COVERAGE FOR PRESCRIPTION DRUGS UNDER~~
3 ~~HEALTH INSURANCE POLICIES OR CONTRACTS THAT ARE DELIVERED OR ISSUED~~
4 ~~FOR DELIVERY IN THE STATE TO EMPLOYERS OR INDIVIDUALS ON A GROUP OR~~
5 ~~INDIVIDUAL BASIS; AND~~

6 (II) ~~LIMIT COVERAGE OF PRESCRIPTION DRUGS TO THOSE IN A~~
7 ~~FORMULARY; AND~~

8 (2) ~~HEALTH MAINTENANCE ORGANIZATIONS THAT:~~

9 (1) ~~PROVIDE COVERAGE FOR PRESCRIPTION DRUGS UNDER~~
10 ~~CONTRACTS THAT ARE DELIVERED OR ISSUED FOR DELIVERY IN THE STATE TO~~
11 ~~EMPLOYERS OR INDIVIDUALS ON A GROUP OR INDIVIDUAL BASIS; AND~~

12 (II) ~~LIMIT COVERAGE OF PRESCRIPTION DRUGS TO THOSE IN A~~
13 ~~FORMULARY.~~

14 (C) (1) ~~EACH ENTITY SUBJECT TO THIS SECTION SHALL ESTABLISH AND~~
15 ~~IMPLEMENT A PROCEDURE BY WHICH A MEMBER MAY RECEIVE A PRESCRIPTION~~
16 ~~DRUG THAT IS NOT IN A FORMULARY IF, IN THE JUDGMENT OF THE PHYSICIAN WHO~~
17 ~~IS CARING FOR THE MEMBER, THE PRESCRIPTION DRUG IS MEDICALLY NECESSARY~~
18 ~~BECAUSE THE FORMULARY DRUG:~~

19 (1) ~~HAS BEEN INEFFECTIVE IN TREATING THE DISEASE OR~~
20 ~~CONDITION OF THE MEMBER; OR~~

21 (II) ~~HAS CAUSED OR IS LIKELY TO CAUSE AN ADVERSE REACTION~~
22 ~~OR OTHER HARM TO THE MEMBER.~~

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

26 (3) ~~AN ENTITY SUBJECT TO THIS SECTION MAY NOT LIMIT THE RIGHT~~
27 ~~OF A MEMBER WHO HAS A RECURRING DISEASE OR CONDITION TO OBTAIN A~~
28 ~~PRESCRIPTION DRUG UNDER THIS SUBSECTION FOR TREATMENT OF THAT DISEASE~~
29 ~~OR CONDITION.~~

30 (D) (1) ~~AT LEAST 90 DAYS BEFORE SUBSTITUTING ANOTHER PRESCRIPTION~~
31 ~~DRUG FOR A PRESCRIPTION DRUG IN ITS FORMULARY, AN ENTITY SUBJECT TO THIS~~
32 ~~SECTION SHALL NOTIFY ANY MEMBER AFFECTED BY THE SUBSTITUTION, IF THE~~
33 ~~SUBSTITUTION IS THE RESULT OF FINANCIAL INCENTIVES, INCLUDING REBATES,~~
34 ~~OFFERED TO THE ENTITY.~~

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

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

4 ~~(II) AN AUTHORIZED PRESCRIBER CONTINUES TO PRESCRIBE THE~~
5 ~~PRESCRIPTION DRUG FOR THE MEMBER FOR TREATMENT OF THAT DISEASE OR~~
6 ~~CONDITION.~~

7 ~~(E) (I) IF PRESCRIBED FOR A MEMBER BY AN AUTHORIZED PRESCRIBER, AN~~
8 ~~ENTITY SUBJECT TO THIS SECTION SHALL PROVIDE COVERAGE FOR A NEW~~
9 ~~PRESCRIPTION DRUG APPROVED BY THE FEDERAL FOOD AND DRUG~~
10 ~~ADMINISTRATION FOR AT LEAST 1 YEAR FROM THE FIRST DAY OF SALE OF THE DRUG~~
11 ~~AFTER APPROVAL BY THE ADMINISTRATION.~~

12 ~~(2) THIS SUBSECTION DOES NOT APPLY TO EXPERIMENTAL DRUGS,~~
13 ~~INVESTIGATIONAL DRUGS, PRESCRIPTIONS AND INJECTIONS FOR CENTRAL~~
14 ~~NERVOUS SYSTEM STIMULANTS AND ANORECTIC AGENTS WHEN USED FOR WEIGHT~~
15 ~~CONTROL, OR DRUGS USED FOR COSMETIC PURPOSES.~~

16 ~~(F) (I) (I) THE MARYLAND HEALTH CARE ACCESS AND COST COMMISSION~~
17 ~~SHALL DEVELOP AND IMPLEMENT A SYSTEM OF RATING THE PRESCRIPTION DRUG~~
18 ~~COVERAGE PLANS OFFERED BY ENTITIES SUBJECT TO THIS SECTION TO ASSIST~~
19 ~~EMPLOYERS AND CONSUMERS IN EVALUATING AND SELECTING A PLAN.~~

20 ~~(II) THE COMMISSION SHALL ESTABLISH A CONSUMER ADVISORY~~
21 ~~PANEL CONSISTING OF 12 MEMBERS TO ADVISE THE COMMISSION IN DEVELOPING~~
22 ~~AND IMPLEMENTING THE RATING SYSTEM REQUIRED UNDER SUBPARAGRAPH (I) OF~~
23 ~~THIS PARAGRAPH.~~

24 ~~(III) THE PANEL SHALL CONSIST OF A REPRESENTATIVE OF:~~

25 ~~1. THE NATIONAL COALITION FOR CANCER SURVIVORSHIP;~~

26 ~~2. THE NATIONAL KIDNEY FOUNDATION;~~

27 ~~3. THE MARYLAND MENTAL HEALTH ASSOCIATION;~~

28 ~~4. THE AMERICAN DIABETES ASSOCIATION;~~

29 ~~5. THE AMERICAN HEART ASSOCIATION;~~

30 ~~6. THE AMERICAN LUNG ASSOCIATION;~~

31 ~~7. THE ARTHRITIS FOUNDATION;~~

32 ~~8. THE MEDICAL AND CHIRURGICAL FACULTY;~~

33 ~~9. THE MARYLAND PHARMACISTS ASSOCIATION;~~

34 ~~10. THE AMERICAN ACADEMY OF PEDIATRICS, MARYLAND~~

35 ~~CHAPTER;~~

1 11. THE AMERICAN ACADEMY OF OBSTETRICIANS AND
2 GYNECOLOGISTS; AND

3 12. THE MARYLAND PATIENT ADVOCACY GROUP.

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

7 (I) IN THE UPPER LEFT HAND CORNER OF THE FIRST PAGE OF
8 EACH DOCUMENT, THE RATING DESIGNATION ASSIGNED TO THE PLAN BY THE
9 COMMISSION; AND

10 (II) AN EXPLANATION OF THE RATING SYSTEM AND THE RATING
11 DESIGNATION ASSIGNED TO THE PLAN.

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

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

19 (2) THE PROCEDURE FOR OBTAINING A COPY OF THE FORMULARY USED
20 BY THE ENTITY;

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

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

25 **~~Article - Health - General~~**

26 ~~19-706.~~

27 (FF) ~~THE PROVISIONS OF § 15-126 OF THE INSURANCE ARTICLE SHALL APPLY~~
28 ~~TO HEALTH MAINTENANCE ORGANIZATIONS.~~

29 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all~~
30 ~~policies, contracts, and health benefit plans issued, delivered, or renewed in the State~~
31 ~~on or after October 1, 1999.~~
32 ~~19-1508.~~

33 (c) (1) The Commission shall:

1 (i) [On or before January 1, 1994, establish] ESTABLISH and
2 implement a system to comparatively evaluate the quality of care outcomes and
3 performance measurements of health maintenance organization benefit plans and
4 services on an objective basis; and

5 (ii) Annually publish the summary findings of the evaluation.

6 (2) The purpose of a comparable performance measurement system
7 established under this section is to assist health maintenance organization benefit
8 plans to improve the quality of care provided by establishing a common set of
9 performance measurements and disseminating the findings of the performance
10 measurements to health maintenance organizations and interested parties.

11 (3) The system, where appropriate, shall solicit performance information
12 from enrollees of health maintenance organizations.

13 (4) (i) The Commission shall adopt regulations to establish the system
14 of evaluation provided under this section.

15 (ii) Before adopting regulations to implement an evaluation system
16 under this section, the Commission shall consider any recommendations of the
17 quality of care subcommittee of the Group Health Association of America and the
18 National Committee for Quality Assurance.

19 (5) The Commission may contract with a private, nonprofit entity to
20 implement the system required under this subsection provided that the entity is not
21 an insurer.

22 (6) THE ANNUAL EVALUATION SUMMARY REQUIRED UNDER
23 PARAGRAPH (1) OF THIS SUBSECTION SHALL:

24 (I) INCLUDE A SUMMARY OF THE DRUG FORMULARY
25 ACCREDITATION STANDARDS OF THE NATIONAL COMMITTEE ON QUALITY
26 ASSURANCE (NCQA); AND

27 (II) INDICATE WHETHER THE FORMULARY DEVELOPMENT
28 PROCESS OF EACH HEALTH MAINTENANCE ORGANIZATION EVALUATED COMPLIES
29 WITH THE NATIONAL COMMITTEE ON QUALITY ASSURANCE (NCQA) ACCREDITATION
30 STANDARDS.

31 SECTION ~~3~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take
32 effect October 1, 1999.

