

SENATE BILL 650

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SB 612/98 - FIN

1999 Regular Session
9lr0487

By: **Senators Van Hollen and Teitelbaum**
Introduced and read first time: February 10, 1999
Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Professionals - Freedom of Speech and Expression**

3 FOR the purpose of prohibiting certain health care carriers from taking certain
4 adverse action concerning the participation of a health care provider on the
5 carrier's provider panel if the health care provider expresses certain written or
6 oral opinions; defining, for purposes of a certain prohibition, the term "carrier"
7 to include a managed care organization or certain entities that contract with
8 managed care organizations to provide mental health or substance abuse
9 benefits; and generally relating to the authority of certain health care carriers to
10 take certain action against certain health care providers who engage in certain
11 speech or expression.

12 BY repealing and reenacting, with amendments,
13 Article - Insurance
14 Section 15-112
15 Annotated Code of Maryland
16 (1997 Volume and 1998 Supplement)

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

19 **Article - Insurance**

20 15-112.

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

22 (2) (i) "Carrier" means:

- 23 1. an insurer;
- 24 2. a nonprofit health service plan;
- 25 3. a health maintenance organization;
- 26 4. a dental plan organization; or

1 (3) shall make efforts to increase the opportunity for a broad range of
2 minority providers to participate on the carrier's provider panel.

3 (d) (1) A provider that seeks to participate on a provider panel of a carrier
4 shall submit an application to the carrier.

5 (2) (i) Subject to paragraph (3) of this subsection, the carrier, after
6 reviewing the application, shall accept or reject the provider for participation on the
7 carrier's provider panel.

8 (ii) If the carrier rejects the provider for participation on the
9 carrier's provider panel, the carrier shall send to the provider at the address listed in
10 the application written notice of the rejection.

11 (3) (i) Except as provided in paragraph (4) of this subsection, within
12 30 days after the date a carrier receives a completed application, the carrier shall
13 send to the provider at the address listed in the application written notice of:

14 1. the carrier's intent to continue to process the provider's
15 application to obtain necessary credentialing information; or

16 2. the carrier's rejection of the provider for participation on
17 the carrier's provider panel.

18 (ii) The failure of a carrier to provide the notice required under
19 subparagraph (i) of this paragraph is a violation of this article and the carrier is
20 subject to the penalties provided by § 4-113(d) of this article.

21 (iii) If, under subparagraph (i)1 of this paragraph, a carrier provides
22 notice to the provider of its intent to continue to process the provider's application to
23 obtain necessary credentialing information, the carrier, within 150 days after the date
24 the notice is provided, shall:

25 1. accept or reject the provider for participation on the
26 carrier's provider panel; and

27 2. send written notice of the acceptance or rejection to the
28 provider at the address listed in the application.

29 (iv) The failure of a carrier to provide the notice required under
30 subparagraph (iii)2 of this paragraph is a violation of this article and the carrier is
31 subject to the provisions of and penalties provided by §§ 4-113 and 4-114 of this
32 article.

33 (4) (i) A carrier that receives an incomplete application shall return
34 the application to the provider at the address listed in the application within 10 days
35 after the date the application is received.

36 (ii) The carrier shall indicate to the provider what information is
37 needed to make the application complete.

1 (iii) The provider may return the completed application to the
2 carrier.

3 (iv) After the carrier receives the completed application, the carrier
4 is subject to the time periods established in paragraph (3) of this subsection.

5 (5) A carrier may charge a reasonable fee for an application submitted to
6 the carrier under this section.

7 (e) (1) IN THIS SUBSECTION, "CARRIER" INCLUDES A MANAGED CARE
8 ORGANIZATION, OR AN ENTITY THAT CONTRACTS WITH A MANAGED CARE
9 ORGANIZATION, TO PROVIDE MENTAL HEALTH OR SUBSTANCE ABUSE SERVICES.

10 (2) A carrier may not deny an application for participation or terminate
11 participation on its provider panel, OR SUSPEND REFERRALS TO A PROVIDER, on the
12 basis of:

13 [(1)] (I) gender, race, age, religion, national origin, or a protected
14 category under the federal Americans with Disabilities Act;

15 [(2)] (II) the type or number of appeals that the provider files under
16 Subtitle 10B of this title;

17 [(3)] (III) the number of grievances or complaints that the provider
18 files on behalf of a patient under Subtitle 10A of this title; [or]

19 [(4)] (IV) the type or number of complaints or grievances that the
20 provider files or requests for review under the carrier's internal review system
21 established under subsection (h) of this [section] SECTION; OR

22 (V) THE WRITTEN OR ORAL EXPRESSION BY THE PROVIDER OF AN
23 OPINION THAT:

24 1. IS CRITICAL OF THE OPERATIONAL PROCEDURES OF A
25 CARRIER, INCLUDING THE DECISION OF THE CARRIER CONCERNING THE
26 TREATMENT OF A PATIENT; OR

27 2. ADVOCATES GOVERNMENTAL REGULATION OF A
28 CARRIER.

29 (f) (1) A carrier may not deny an application for participation or terminate
30 participation on its provider panel solely on the basis of the license, certification, or
31 other authorization of the provider to provide health care services if the carrier
32 provides health care services within the provider's lawful scope of practice.

33 (2) Notwithstanding paragraph (1) of this subsection, a carrier may
34 reject an application for participation or terminate participation on its provider panel
35 based on the participation on the provider panel of a sufficient number of similarly
36 qualified providers.

1 (3) A violation of this subsection does not create a new cause of action.

2 (g) (1) IN THIS SUBSECTION, "CARRIER" INCLUDES A MANAGED CARE
3 ORGANIZATION, OR AN ENTITY THAT CONTRACTS WITH A MANAGED CARE
4 ORGANIZATION, TO PROVIDE MENTAL HEALTH OR SUBSTANCE ABUSE SERVICES.

5 (2) A carrier may not terminate participation on its provider panel,
6 SUSPEND REFERRALS, or otherwise penalize a provider for:

7 [(1)] (I) advocating the interests of a patient through the carrier's
8 internal review system established under subsection (h) of this section;

9 [(2)] (II) filing an appeal under Subtitle 10B of this title; or

10 [(3)] (III) filing a grievance or complaint on behalf of a patient under
11 Subtitle 10A of this [title] TITLE; OR

12 (IV) EXPRESSING A WRITTEN OR ORAL OPINION THAT:

13 1. IS CRITICAL OF THE OPERATIONAL PROCEDURES OF A
14 CARRIER, INCLUDING A DECISION OF THE CARRIER CONCERNING THE TREATMENT
15 OF A PATIENT; OR

16 2. ADVOCATES GOVERNMENTAL REGULATION OF A
17 CARRIER.

18 (H) (1) IN THIS SUBSECTION, "CARRIER" INCLUDES A MANAGED CARE
19 ORGANIZATION, OR AN ENTITY THAT CONTRACTS WITH A MANAGED CARE
20 ORGANIZATION, TO PROVIDE MENTAL HEALTH OR SUBSTANCE ABUSE SERVICES.

21 (2) A CARRIER THAT TERMINATES A PROVIDER, OR SUSPENDS
22 REFERRALS TO A PROVIDER, MUST NOTIFY SUCH PROVIDER IN WRITING WITHIN
23 SIXTY DAYS OF THE REASONS FOR SUCH TERMINATION OR SUSPENSION.

24 (3) NOTHING IN THIS SUBSECTION IS INTENDED TO RESTRICT ANY
25 OTHER NOTIFICATION REQUIREMENTS PLACED ON A CARRIER.

26 [(h)] (I) Each carrier shall establish an internal review system to resolve
27 grievances initiated by providers that participate on the carrier's provider panel,
28 including grievances involving the termination of a provider from participation on the
29 carrier's provider panel.

30 [(i)] (J) (1) For at least 90 days after the date of the notice of termination of
31 a primary care provider from a carrier's provider panel for reasons unrelated to fraud,
32 patient abuse, incompetency, or loss of licensure status, the primary care provider
33 shall furnish health care services to each enrollee:

34 (i) who was receiving health care services from the primary care
35 provider before the notice of termination; and

1 (ii) who, after receiving notice under subsection (b) of this section of
2 the termination of the primary care provider, requests to continue receiving health
3 care services from the primary care provider.

4 (2) A carrier shall reimburse a primary care provider that furnishes
5 health care services under this subsection in accordance with the primary care
6 provider's agreement with the carrier.

7 [(j)] (K) (1) A carrier shall provide to prospective enrollees before
8 enrollment and to existing enrollees at least once a year:

9 (i) a list of providers on the carrier's provider panel; and

10 (ii) information on providers that are no longer accepting new
11 patients.

12 (2) The information provided under paragraph (1) of this subsection
13 shall be updated at least once a year.

14 (3) A policy, certificate, or other evidence of coverage shall:

15 (i) indicate clearly the office in the Administration that is
16 responsible for receiving and responding to complaints from enrollees about carriers;
17 and

18 (ii) include the telephone number of the office and the procedure for
19 filing a complaint.

20 [(k)] (L) The Commissioner:

21 (1) shall adopt regulations that relate to the procedures that carriers
22 must use to process applications for participation on a provider panel; and

23 (2) in consultation with the Secretary of Health and Mental Hygiene,
24 shall adopt strategies to assist carriers in maximizing the opportunity for a broad
25 range of minority providers to participate in the delivery of health care services.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 July 1, 1999.