

BY: Conference Committee

AMENDMENTS TO SENATE BILL NO. 497
(Third Reading File Bill)

AMENDMENT NO. 1

At the top of page 1 of the bill, strike "EMERGENCY BILL".

On page 1, in lines 2 and 3, strike "Insurance - Administrative Service Provider Contract Law - Clarification and Modification" and substitute "Maintenance Organizations - Responsibility for and Regulation of Downstream Risk"; and strike beginning with "clarifying" in line 4 down through "modification" in line 19 and substitute "requiring health maintenance organizations and certain other entities that enter into administrative service provider contracts to meet certain requirements; clarifying the responsibility of certain health maintenance organizations for certain claims and payments for health care services under an administrative service provider contract; specifying that certain requirements concerning administrative service provider contracts apply to managed care organizations under the Maryland Medical Assistance Program; requiring the Insurance Commissioner to consult with the Secretary of Health and Mental Hygiene before taking certain action; requiring the Commissioner, in consultation with the Secretary of Health and Mental Hygiene, to adopt certain regulations for a certain methodology; specifying that certain provisions of law apply to a certain contract; providing for a certain exemption; requiring a contracting provider to submit certain information to a health maintenance organization; specifying the time frames within which certain reports and financial statements must be filed with a certain health maintenance organization; requiring a certain health maintenance organization to establish a certain fund; authorizing the Commissioner to consider certain facts when determining the sufficiency of a certain fund; requiring a certain fund to be held in trust; specifying the frequency of certain reviews and inspections; specifying that a health maintenance organization shall meet certain requirements regardless of the existence of a certain fund or certain contract provisions; specifying the contents of a certain plan to be filed and approved by the Commissioner; requiring certain health maintenance organizations to file certain information with the Commissioner; specifying the responsibilities of certain entities upon a contracting provider's failure to comply with a certain plan; requiring a certain

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health maintenance organization to comply with the terms of a certain contract providing that a certain segregated fund is not the asset of a certain contracting provider for a certain purpose; establishing a certain registration system for certain contracting providers; establishing a certain fee; prohibiting a health maintenance organization from contracting with a certain unregistered contracting provider; providing for certain application procedures; authorizing the Commissioner to adopt certain regulations; establishing certain penalties; altering certain definitions; defining certain terms; providing for the application of this Act; and generally relating to health maintenance organizations, contracting providers, and regulation"; and in line 20, strike "contract law" and substitute "contracts".

AMENDMENT NO. 2

On page 1, after line 20, insert:

"BY renumbering

Article - Health - General

Section 19-713.3 and 19-713.4, respectively

to be Section 19-713.4 and 19-713.5, respectively

Annotated Code of Maryland

(1996 Replacement Volume and 1999 Supplement)".

On page 2, in line 2, strike "and" and substitute a comma; in the same line, after "19-713.2" insert ", and 19-730"; and after line 4, insert:

"BY adding to

Article - Health - General

Section 19-712(c) and (d) and 19-713.3

Annotated Code of Maryland

(1996 Replacement Volume and 1999 Supplement)

BY repealing and reenacting, with amendments,

Article - Insurance

Section 15-605(a)

Annotated Code of Maryland

(1997 Volume and 1999 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 19-713.3 and 19-713.4, respectively, of Article - Health - General of the Annotated Code of Maryland be renumbered to be Section(s) 19-713.4 and 19-713.5, respectively.”;

and in line 5, strike “1. BE IT” and substitute “2. AND BE IT FURTHER”; and in lines 5 and 6, strike “BY THE GENERAL ASSEMBLY OF MARYLAND”.

AMENDMENT NO. 3

On page 2, in line 14, after “(C)” insert “(1)”; in the same line, after “19-712(B)” insert “, (C), AND (D),”; in the same line, strike “AND”; in the same line, after “19-713.2” insert “, AND 19-713.3”; and after line 16, insert:

“(2) THE INSURANCE COMMISSIONER SHALL CONSULT WITH THE SECRETARY BEFORE TAKING ANY ACTION AGAINST A MANAGED CARE ORGANIZATION UNDER THIS SUBSECTION.”.

AMENDMENT NO. 4

On page 2, in line 24, strike “(I) [A] SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, A” and substitute “A”; in line 27, strike “§ 19-713.1” and substitute “§ 19-713.2”; in lines 28 and 29, strike “FINANCIALLY AND ADMINISTRATIVELY”; in lines 30 and 31, in each instance, strike the brackets; and in lines 30 and 31, strike “1.” and “2.”, respectively.

On page 3, strike in their entirety lines 1 through 10, inclusive; and in line 12, strike “§ 19-712.1 of this subtitle” and substitute “§ 15-1005 OF THE INSURANCE ARTICLE.”

(C) THE RESPONSIBILITY OF A HEALTH MAINTENANCE ORGANIZATION FOR CLAIMS OR PAYMENTS FOR HEALTH CARE SERVICES IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION UNDER AN ADMINISTRATIVE SERVICE PROVIDER CONTRACT:

(1) IS NOT LIMITED BY THE AMOUNT IN A SEGREGATED FUND ESTABLISHED UNDER § 19-713.2 OF THIS TITLE;

(2) EXISTS IRRESPECTIVE OF THE INSOLVENCY OR OTHER INABILITY OR FAILURE OF A CONTRACTING PROVIDER, AS DEFINED IN § 19-713.2 OF THIS SUBTITLE, TO PAY;

(3) EXISTS IRRESPECTIVE OF THE DELEGATION OR FURTHER SUBCONTRACTING OF HEALTH CARE SERVICES BY A CONTRACTING PROVIDER TO AN EXTERNAL PROVIDER, AS DEFINED IN § 19-713.2 OF THIS SUBTITLE;

(4) MAY NOT BE ALTERED BY CONTRACT; AND

(5) APPLIES TO ALL HEALTH CARE SERVICES, INCLUDING THOSE PROVIDED UNDER STATE AND FEDERAL PROGRAMS, UNLESS PREEMPTED BY FEDERAL LAW.

(D) SUBSECTIONS (B) AND (C) OF THIS SECTION APPLY TO A CONTRACT BETWEEN A HEALTH MAINTENANCE ORGANIZATION AND ANY COMPANY AFFILIATED WITH THE HEALTH MAINTENANCE ORGANIZATION THROUGH COMMON OWNERSHIP WITHIN AN INSURANCE HOLDING COMPANY SYSTEM, THAT MEETS THE DEFINITION OF A CONTRACTING PROVIDER UNDER § 19-713.2 OF THIS SUBTITLE”.

AMENDMENT NO. 5

On page 3, in line 23, strike “within” and substitute “WITH”; in lines 25 and 26, strike “physician or other health care provider” and substitute “PERSON”; after line 31, insert:

“(B) THIS SECTION DOES NOT APPLY TO A CONTRACT BETWEEN A HEALTH MAINTENANCE ORGANIZATION AND A CONTRACTING PROVIDER THAT IS AFFILIATED WITH THE HEALTH MAINTENANCE ORGANIZATION THROUGH COMMON OWNERSHIP WITHIN AN INSURANCE HOLDING COMPANY SYSTEM, IF THE HEALTH MAINTENANCE ORGANIZATION:

(1) FILES WITH THE COMMISSIONER CONSOLIDATED FINANCIAL STATEMENTS THAT INCLUDE THE CONTRACTING PROVIDER; AND

(2) RECORDS A RESERVE FOR THE LIABILITIES OF THE CONTRACTING PROVIDER IN ACCORDANCE WITH § 5-201 OF THIS ARTICLE.”; and in line 32, strike “(b)” and substitute “(C)”.

AMENDMENT NO. 6

On page 4, in line 3, strike “(c)” and “(b)”, respectively, and substitute “(D)” and “(C)”, respectively; in line 5, strike “regular” and substitute “MONTHLY”; in the same line, strike “at least quarterly” and substitute “WITHIN 30 DAYS OF THE END OF THE MONTH REPORTED”; in line 10, after “year” insert “, WITHIN 90 DAYS OF THE END OF THE YEAR REPORTED”; in line 11, strike “creation by the”; in line 12, strike “of” and substitute “TO ESTABLISH AND MAINTAIN”; in line 13, after “fund” insert “, IN A FORM AND AN AMOUNT APPROVED BY THE COMMISSIONER,”; strike beginning with “(which” in line 13 down through “are” in line 14 and substitute “WHICH MAY INCLUDE WITHHELD FUNDS, ESCROW ACCOUNTS, LETTERS OF CREDIT, OR SIMILAR ARRANGEMENTS, OR REQUIRE THE AVAILABILITY OF OTHER RESOURCES THAT ARE”; in line 17, strike “an explanation of how” and substitute “THE CONTRACTING PROVIDER TO SUBMIT TO THE HEALTH MAINTENANCE ORGANIZATION INFORMATION DEMONSTRATING THAT”; in the same line, strike “or resources required” and substitute “ESTABLISH”; in line 18, strike “paragraph” and substitute “ITEM”; in the same line, strike “create funds or other resources” and substitute “IS”; in line 20, strike the brackets; strike beginning with “; AND” in line 25 down through “PROVIDER” in line 33; after line 33, insert:

“(E) IN DETERMINING THE SUFFICIENCY OF A SEGREGATED FUND, THE COMMISSIONER MAY CONSIDER WHETHER EXTERNAL PROVIDERS ARE OWNED OR CONTROLLED BY THE CONTRACTING PROVIDER.

(F) THE SEGREGATED FUND OR OTHER RESOURCES ESTABLISHED AS A RESULT OF AN ADMINISTRATIVE SERVICE PROVIDER CONTRACT:

(1) SHALL BE HELD IN TRUST FOR PAYMENT TO EXTERNAL PROVIDERS; AND

(2) MAY NOT BE CONSIDERED AN ASSET OR AN ACCOUNT OF THE

CONTRACTING PROVIDER FOR THE PURPOSE OF DETERMINING THE ASSETS OR ACCOUNTS OF A BANKRUPT CONTRACTING PROVIDER."; and in lines 34 and 36, strike "(E)" and "(F)", respectively, and substitute "(G)" and "(H)", respectively.

AMENDMENT NO. 7

On page 5, in line 1, strike the brackets; in lines 1 and 2, strike "SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, UPON"; in line 4, after "shall" insert "NOTIFY THE COMMISSIONER AND SHALL"; in lines 4 and 5, strike "FINANCIAL RESPONSIBILITY FOR AND THE"; in lines 5 and 6, strike "UNDER THE ADMINISTRATIVE SERVICE PROVIDER CONTRACT"; in line 7, after "provider" insert ", AS REQUIRED UNDER § 19-712 OF THIS SUBTITLE"; strike in their entirety lines 8 through 17, inclusive, and substitute:

"(I) THE HEALTH MAINTENANCE ORGANIZATION SHALL FILE WITH THE COMMISSIONER THE RESULTS OF EACH QUARTERLY REVIEW REQUIRED UNDER SUBSECTION (D)(5) OF THIS SECTION."

in line 18, strike "(G)" and substitute "(J)"; and strike in their entirety lines 21 through 33, inclusive, and substitute:

"(K) A HEALTH MAINTENANCE ORGANIZATION AND A CONTRACTING PROVIDER SHALL COMPLY WITH THE TERMS OF AN ADMINISTRATIVE SERVICE PROVIDER CONTRACT AS REQUIRED UNDER THIS SECTION AND § 19-712 OF THIS SUBTITLE.

"(L) IF A CONTRACTING PROVIDER FAILS TO COMPLY WITH THE PLAN OR THE ADMINISTRATIVE SERVICE PROVIDER CONTRACT, AS REQUIRED UNDER SUBSECTIONS (G) AND (K) OF THIS SECTION, THE COMMISSIONER MAY IMPOSE A FINE NOT EXCEEDING \$125,000 OR SUSPEND OR REVOKE THE REGISTRATION OF THE CONTRACTING PROVIDER UNDER § 19-713.3 OF THIS SUBTITLE, OR BOTH.

19-713.3.

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

(2) "ADMINISTRATIVE SERVICE PROVIDER CONTRACT" HAS THE MEANING STATED IN § 19-713.2 OF THIS SUBTITLE.

(3) "CONTRACTING PROVIDER" HAS THE MEANING STATED IN § 19-713.2 OF THIS SUBTITLE.

(B) (1) A PERSON MUST REGISTER WITH THE COMMISSIONER BEFORE THE PERSON ACTS AS A CONTRACTING PROVIDER IN THIS STATE.

(2) A HEALTH MAINTENANCE ORGANIZATION MAY NOT ENTER INTO AN ADMINISTRATIVE SERVICE PROVIDER CONTRACT WITH A CONTRACTING PROVIDER THAT HAS NOT REGISTERED WITH THE COMMISSIONER.

(C) (1) AN APPLICANT FOR REGISTRATION SHALL SUBMIT AN APPLICATION TO THE COMMISSIONER IN A FORM APPROVED BY THE COMMISSIONER AND INCLUDE ANY INFORMATION REQUIRED UNDER SUBSECTION (E) OF THIS SECTION.

(2) A REGISTRATION UNDER THIS SECTION EXPIRES 2 YEARS FROM THE DATE THAT THE APPLICATION IS APPROVED.

(D) THE COMMISSIONER MAY CHARGE A REGISTRATION FEE SUFFICIENT TO COVER THE COST OF IMPLEMENTING THIS SECTION.

(E) THE COMMISSIONER MAY ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION AND § 19-713.2 OF THIS SUBTITLE.

19-730.

(a) If any person violates any provision of § 19-729 of this subtitle, the Commissioner may:

(1) Issue an administrative order that requires the health maintenance

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organization to:

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

(ii) Fulfill its contractual obligations;

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

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

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

(vi) Cease any advertising or solicitation;

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

(3) Impose any penalty that could be imposed on an insurer under § 4-113(d) of the Insurance Article;]

(2) IN ADDITION TO SUSPENDING OR REVOKING A CERTIFICATE OF AUTHORITY:

(I) IMPOSE A PENALTY OF NOT LESS THAN \$100, BUT NOT MORE THAN \$125,000 FOR EACH VIOLATION; AND

(II) ORDER THE HEALTH MAINTENANCE ORGANIZATION TO PAY RESTITUTION TO ANY PERSON WHO HAS SUFFERED FINANCIAL INJURY BECAUSE OF THE VIOLATION.

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

[(5)](4) Suspend, revoke, or refuse to renew the certificate of a medical director of a health maintenance organization; OR

[(6) Impose any penalty that could be imposed on an insurer under § 4-113(d) of the Insurance Article; or

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

(b) If the Commissioner issues an order or imposes any penalty under this section, the Commissioner immediately shall provide written notice of the order or penalty to the Secretary.

Article - Insurance

15-605.

(a) (1) On or before March 1 of each year, an annual report that meets the specifications of paragraph (2) of this subsection shall be submitted to the Commissioner by:

(i) each authorized insurer that provides health insurance in the State;

(ii) each nonprofit health service plan that is authorized by the Commissioner to operate in the State;

(iii) each health maintenance organization that is authorized by the Commissioner to operate in the State; and

(iv) as applicable in accordance with regulations adopted by the Commissioner, each managed care organization that is authorized to receive Medicaid prepaid capitation payments under Title 15, Subtitle 1 of the Health - General Article.

(2) The annual report required under this subsection shall:

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(i) be submitted in a form required by the Commissioner; and

(ii) include for the preceding calendar year the following data for all health benefit plans specific to the State:

1. premiums written;

2. premiums earned;

3. total amount of incurred claims including reserves for claims incurred but not reported at the end of the previous year;

4. total amount of incurred expenses, including commissions, acquisition costs, general expenses, taxes, licenses, and fees, estimated if necessary;

5. loss ratio; and

6. expense ratio.

(3) The data required under paragraph (2) of this subsection shall be reported:

(i) by product delivery system for health benefit plans that are issued under Subtitle 12 of this title;

(ii) in the aggregate for health benefit plans that are issued to individuals;

(iii) in the aggregate for a managed care organization that operates under Title 15, Subtitle 1 of the Health - General Article; and

(iv) in a manner determined by the Commissioner in accordance with this subsection for all other health benefit plans.

(4) THE COMMISSIONER, IN CONSULTATION WITH THE SECRETARY OF HEALTH AND MENTAL HYGIENE, SHALL ESTABLISH AND ADOPT BY REGULATION

A METHODOLOGY TO BE USED IN THE ANNUAL REPORT THAT ENSURES A CLEAR SEPARATION OF ALL MEDICAL AND ADMINISTRATIVE EXPENSES WHETHER INCURRED DIRECTLY OR THROUGH A SUBCONTRACTOR.

[4](5) The Commissioner may conduct an examination to ensure that an annual report submitted under this subsection is accurate.

[(5)](6) Failure of an insurer, nonprofit health service plan, or health maintenance organization to submit the information required under this subsection in a timely manner shall result in a penalty of \$500 for each day after March 1 that the information is not submitted.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act applies to an administrative service provider contract entered into on or after June 1, 2000. An administrative service provider contract in effect before June 1, 2000, shall comply with the provisions of this Act no later than January 1, 2001.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2000."