

SENATE BILL 405

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2000 Regular Session
0lr2129
CF 0lr1586

By: **Senator Astle**

Introduced and read first time: February 3, 2000

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Health Maintenance Organizations - Subscribers and Enrollees - Private**
3 **Contracts for Health Care Services**

4 FOR the purpose of authorizing health care providers or representatives to collect
5 certain payments or charges from subscribers or enrollees of health
6 maintenance organizations under certain circumstances; establishing the usual,
7 customary, and reasonable rate of payment to health care providers by health
8 maintenance organizations under certain circumstances; providing that health
9 maintenance organizations shall bear the burden of proving that their payments
10 are at the usual, customary, and reasonable rate; authorizing subscribers or
11 enrollees of health maintenance organizations to enter into certain private
12 contracts for health care services with health care providers under which the
13 subscribers or enrollees accept financial responsibility for health care services
14 under certain circumstances; requiring the Health Education and Advocacy Unit
15 in the Consumer Protection Division of the Office of the Attorney General to
16 develop a certain form; authorizing the enforcement of the provisions of this Act
17 in a certain manner under certain circumstances; and generally relating to
18 private contracts for health care services made by subscribers or enrollees of
19 health maintenance organizations.

20 BY repealing and reenacting, with amendments,
21 Article - Health - General
22 Section 19-710(o) and 19-710.1
23 Annotated Code of Maryland
24 (1996 Replacement Volume and 1999 Supplement)

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

27 **Article - Health - General**

28 19-710.

29 (o) (1) Except as provided in paragraph (3) of this subsection, individual
30 enrollees and subscribers of health maintenance organizations issued certificates of

1 authority to operate in this State shall not be liable to any health care provider for
2 any covered services provided to the enrollee or subscriber.

3 (2) (i) A health care provider or any representative of a health care
4 provider may not collect or attempt to collect from any subscriber or enrollee any
5 money owed to the health care provider by a health maintenance organization issued
6 a certificate of authority to operate in this State.

7 (ii) A health care provider or any representative of a health care
8 provider may not maintain any action against any subscriber or enrollee to collect or
9 attempt to collect any money owed to the health care provider by a health
10 maintenance organization issued a certificate of authority to operate in this State.

11 (3) Notwithstanding any other provision of this subsection, a health care
12 provider or representative of a health care provider may collect or attempt to collect
13 from a subscriber or enrollee:

14 (i) Any copayment or coinsurance sums owed by the subscriber or
15 enrollee to a health maintenance organization issued a certificate of authority to
16 operate in this State for covered services provided by the health care provider; [or]

17 (ii) Any payment or charges for services not covered under the
18 subscriber's contract; OR

19 (III) ANY PAYMENT OR CHARGES FOR COVERED SERVICES UNDER §
20 19-710.1(D) OF THIS SUBTITLE.

21 19-710.1.

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

23 (2) "Enrollee" means a subscriber or member of the health maintenance
24 organization.

25 (3) "Covered service" means a health care service included in the benefit
26 package of the health maintenance organization and rendered to an enrollee of the
27 health maintenance organization by a health care provider, including a physician or
28 hospital, not under written contract with the health maintenance organization:

29 (i) Pursuant to a verbal or written referral by the enrollee's health
30 maintenance organization or by a provider under written contract with the enrollee's
31 health maintenance organization; or

32 (ii) That has been preauthorized or otherwise approved either
33 verbally or in writing by the enrollee's health maintenance organization or a provider
34 under written contract with the enrollee's health maintenance organization.

35 (4) "Adjunct claims documentation" means an abstract of an enrollee's
36 medical record which describes and summarizes the diagnosis and treatment of, and
37 services rendered to, the enrollee.

1 (b) (1) In addition to any other provisions of this subtitle, for a covered
2 service rendered to an enrollee of a health maintenance organization by a health care
3 provider not under written contract with the health maintenance organization, the
4 health maintenance organization or its agent:

5 (i) Shall pay the health care provider within 30 days after the
6 receipt of a claim in accordance with the applicable provisions of this subtitle; and

7 (ii) Shall pay the claim submitted by:

8 1. A hospital at the rate approved by the Health Services
9 Cost Review Commission; and

10 2. Any other health care provider at the rate billed or at the
11 usual, customary, and reasonable rate.

12 (2) A health maintenance organization that pays a health care provider
13 at the usual, customary, and reasonable rate:

14 (i) Except for services rendered to medical assistance recipients or
15 for services rendered under a contract entered into under § 1876(g) of the federal
16 Social Security Act (42 U.S.C. § 1395mm), may not use Medicare, Medicaid, or
17 workers' compensation payments as part of any methodology used to determine a
18 payment at the usual, customary, and reasonable rate; [and]

19 (II) SHALL BEAR THE BURDEN OF PROVING THAT ITS PAYMENT IS
20 AT THE USUAL, CUSTOMARY, AND REASONABLE RATE; AND

21 [(ii)] (III) On request of the health care provider, shall disclose the
22 methodology used to determine the amount of payment.

23 (3) THE USUAL, CUSTOMARY, AND REASONABLE RATE IS THE AMOUNT
24 AT WHICH 90% OF ALL CLAIMS SUBMITTED TO THE HEALTH MAINTENANCE
25 ORGANIZATION IN THE PRECEDING CALENDAR YEAR FOR THE SAME SERVICE
26 WOULD BE PAID IN FULL.

27 (c) (1) A health maintenance organization may seek reimbursement from an
28 enrollee for any payment under subsection (b) of this section for a claim or portion of
29 a claim submitted by a health care provider and paid by the health maintenance
30 organization that the health maintenance organization determines is the
31 responsibility of the enrollee.

32 (2) The health maintenance organization may request and the health
33 care provider shall provide adjunct claims documentation to assist in making the
34 determination under paragraph (1) of this subsection or under subsection (b) of this
35 section.

36 (D) (1) A HEALTH MAINTENANCE ORGANIZATION SUBSCRIBER OR
37 ENROLLEE MAY ENTER INTO A PRIVATE CONTRACT WITH A HEALTH CARE PROVIDER
38 THAT CONTAINS A PROVISION UNDER WHICH THE SUBSCRIBER OR ENROLLEE

1 ACCEPTS RESPONSIBILITY FOR PAYING CHARGES TO THE HEALTH CARE PROVIDER
2 IF:

3 (I) THE HEALTH CARE PROVIDER DOES NOT HAVE A CONTRACT
4 WITH THE SUBSCRIBER'S OR ENROLLEE'S HEALTH MAINTENANCE ORGANIZATION;

5 (II) THE HEALTH MAINTENANCE ORGANIZATION DID NOT REFER
6 THE SUBSCRIBER OR ENROLLEE TO THE HEALTH CARE PROVIDER;

7 (III) THE HEALTH CARE SERVICES PROVIDED ARE NOT EMERGENCY
8 SERVICES; AND

9 (IV) BEFORE TREATMENT, THE PATIENT AND HEALTH CARE
10 PROVIDER SIGN A FORM DEVELOPED BY THE HEALTH EDUCATION AND ADVOCACY
11 UNIT IN THE CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY
12 GENERAL.

13 (2) THE FORM DESCRIBED IN PARAGRAPH (1)(IV) OF THIS SUBSECTION
14 SHALL STATE IN PLAIN LANGUAGE THAT:

15 (I) THE SUBSCRIBER OR ENROLLEE IS ACCEPTING FINANCIAL
16 RESPONSIBILITY FOR THE HEALTH CARE SERVICES; AND

17 (II) THE CONDITIONS OF PARAGRAPH (1)(I), (II), AND (III) OF THE
18 SUBSECTION ARE MET.

19 (E) THE PROVISIONS OF THIS SECTION AND § 19-710(O) OF THIS SUBTITLE DO
20 NOT APPLY TO HEALTH CARE SERVICES THAT ARE COVERED BY THE HEALTH
21 MAINTENANCE ORGANIZATION SOLELY AS A RESULT OF A POINT-OF-SERVICE
22 OPTION OF A HEALTH MAINTENANCE ORGANIZATION AS DEFINED IN § 19-710.2 OF
23 THIS SUBTITLE.

24 (F) IF THE HEALTH MAINTENANCE ORGANIZATION PAYS A CLAIM FOR A
25 HEALTH CARE SERVICE FOR WHICH THE SUBSCRIBER OR ENROLLEE HAS PRIVATELY
26 CONTRACTED WITH A HEALTH CARE PROVIDER UNDER SUBSECTION (D) OF THIS
27 SECTION, THE PATIENT OR HEALTH CARE PROVIDER MAY ACCEPT PAYMENT
28 WITHOUT AFFECTING THE PRIVATE CONTRACT.

29 (G) (1) A HEALTH CARE PROVIDER MAY ENFORCE THE PROVISIONS OF THIS
30 SECTION BY FILING A COMPLAINT AGAINST A HEALTH MAINTENANCE
31 ORGANIZATION WITH THE MARYLAND INSURANCE ADMINISTRATION OR BY FILING A
32 CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION UNDER § 1-501 OR § 4-201
33 OF THE COURTS ARTICLE.

34 (2) THE MARYLAND INSURANCE ADMINISTRATION OR A COURT SHALL
35 AWARD REASONABLE ATTORNEY FEES IF THE COMPLAINT OF THE HEALTH CARE
36 PROVIDER IS SUSTAINED.

37 [(d)] (H) In addition to any other penalties under this subtitle, the
38 Commissioner may impose a penalty not to exceed \$5,000 on any health maintenance

1 organization which violates the provisions of this section if the violation is committed
2 with such frequency as to indicate a general business practice of the health
3 maintenance organization.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2000.