

SENATE BILL 497
EMERGENCY BILL

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2000 Regular Session
0lr1800

By: **Senators Bromwell and Miller**

Introduced and read first time: February 4, 2000

Assigned to: Finance

Committee Report: Favorable

Senate action: Adopted

Read second time: March 27, 2000

CHAPTER _____

1 AN ACT concerning

2 **Health Insurance - Administrative Service Provider Contract Law -**
3 **Clarification and Modification**

4 FOR the purpose of clarifying that a health maintenance organization is responsible
5 for certain obligations under an administrative service provider contract under
6 certain circumstances; clarifying that certain responsibilities of a health
7 maintenance organization are not subject to certain limitations and exist
8 irrespective of certain conditions; requiring a health maintenance organization
9 to create a segregated fund for certain purposes under certain circumstances;
10 requiring a health maintenance organization to audit and inspect certain books,
11 records, and operations of a contracting provider under certain circumstances;
12 requiring a health maintenance organization to include certain information in a
13 certain annual report; prohibiting the consideration of a certain segregated fund
14 as an asset or account of a contracting provider under certain circumstances;
15 applying to managed care organizations certain provisions of law that relate to
16 health maintenance organizations; requiring the Maryland Insurance
17 Administration to make a certain report to the Governor and to the General
18 Assembly in a certain manner by a certain date; making this Act an emergency
19 measure; and generally relating to the clarification and modification of
20 administrative service provider contract law.

21 BY repealing and reenacting, with amendments,
22 Article - Health - General
23 Section 15-102.3
24 Annotated Code of Maryland
25 (1994 Replacement Volume and 1999 Supplement)

26 BY repealing and reenacting, with amendments,

1 Article - Health - General
2 Section 19-712(b) and 19-713.2
3 Annotated Code of Maryland
4 (1996 Replacement Volume and 1999 Supplement)

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

7 **Article - Health - General**

8 15-102.3.

9 (a) The provisions of § 15-112 of the Insurance Article (Provider panels) shall
10 apply to managed care organizations in the same manner they apply to carriers.

11 (b) The provisions of § 15-1005 of the Insurance Article shall apply to
12 managed care organizations in the same manner they apply to health maintenance
13 organizations.

14 (C) THE PROVISIONS OF §§ 19-712(B) AND 19-713.2 OF THIS ARTICLE SHALL
15 APPLY TO MANAGED CARE ORGANIZATIONS IN THE SAME MANNER THEY APPLY TO
16 HEALTH MAINTENANCE ORGANIZATIONS.

17 [(c)] (D) (1) Except as otherwise provided in this subsection, the provisions
18 of § 19-718 of this article (Financial affairs examination) shall apply to managed care
19 organizations in the same manner they apply to health maintenance organizations.

20 (2) The Insurance Commissioner or an agent of the Commissioner shall
21 examine the financial affairs and status of each managed care organization at least
22 once every 5 years.

23 19-712.

24 (b) (1) (I) [A] SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, A
25 person who holds a certificate of authority to operate a health maintenance
26 organization under this subtitle and who enters into any administrative service
27 provider contract, as defined in § 19-713.1 of this subtitle, with a person or entity for
28 the provision of health care services to subscribers shall be FINANCIALLY AND
29 ADMINISTRATIVELY responsible for all claims or payments for health care services:

30 [(i)] 1. Covered under the subscriber's contract; and

31 [(ii)] 2. Rendered by a provider, who is not the person or entity
32 which entered into the administrative service provider contract with the health
33 maintenance organization, pursuant to a referral by a person or entity which entered
34 into the administrative service provider contract with the health maintenance
35 organization.

1 (II) THE FINANCIAL AND ADMINISTRATIVE RESPONSIBILITIES OF A
2 HEALTH MAINTENANCE ORGANIZATION UNDER AN ADMINISTRATIVE SERVICE
3 PROVIDER CONTRACT:

4 1. ARE NOT LIMITED BY THE VALUE OF THE ASSETS OF A
5 SEGREGATED FUND ESTABLISHED UNDER AN ADMINISTRATIVE SERVICE PROVIDER
6 CONTRACT;

7 2. EXIST IRRESPECTIVE OF WHETHER THE CONTRACTING
8 PROVIDER IS INSOLVENT; AND

9 3. EXIST IRRESPECTIVE OF ANY CONTRARY OR LIMITING
10 CONTRACT PROVISION.

11 (2) Responsibility for claims and payments under this subsection is
12 subject to the provisions of § 19-712.1 of this subtitle.

13 19-713.2.

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

15 (2) "Administrative service provider contract" means a contract or
16 capitation agreement between a health maintenance organization and a contracting
17 provider which includes requirements that:

18 (i) The contracting provider accept payments from a health
19 maintenance organization for health care services to be provided to members of the
20 health maintenance organization that the contracting provider arranges to be
21 provided by external providers; and

22 (ii) The contracting provider administer payments pursuant to the
23 contract within the health maintenance organization for the health care services to
24 the external providers.

25 (3) "Contracting provider" means a physician or other health care
26 provider who enters into an administrative service provider contract with a health
27 maintenance organization.

28 (4) "External provider" means a health care provider, including a
29 physician or hospital, who is not:

30 (i) A contracting provider; or

31 (ii) An employee, shareholder, or partner of a contracting provider.

32 (b) A health maintenance organization may not enter into an administrative
33 service provider contract unless:

34 (1) The health maintenance organization files with the Insurance
35 Commissioner a plan that satisfies the requirements of subsection (c) of this section;
36 and

1 (2) The Insurance Commissioner does not disapprove the filing within 30
2 days after the plan is filed.

3 (c) The plan required under subsection (b) of this section shall:

4 (1) Require the contracting provider to provide the health maintenance
5 organization with regular reports, at least quarterly, that identify payments made or
6 owed to external providers in sufficient detail to determine if the payments are being
7 made in compliance with law;

8 (2) Require the contracting provider to provide to the health
9 maintenance organization a current annual financial statement of the contracting
10 provider each year;

11 (3) Require the creation by the [contracting provider, or on the
12 contracting provider's behalf,] HEALTH MAINTENANCE ORGANIZATION of a
13 segregated fund (which may include withheld funds, escrow accounts, letters of credit,
14 or similar arrangements), or require the availability of other resources that are
15 sufficient to satisfy the contracting provider's obligations to external providers for
16 services rendered to members of the health maintenance organization;

17 (4) Require an explanation of how the fund or resources required under
18 paragraph (3) of this subsection create funds or other resources sufficient to satisfy
19 the contracting provider's obligations to external providers for services rendered to
20 members of the health maintenance organization; [and]

21 (5) [Permit] REQUIRE the health maintenance organization, at
22 mutually agreed upon times and upon reasonable prior notice, to audit and inspect
23 the contracting provider's books, records, and operations relevant to the provider's
24 contract for the purpose of determining the contracting provider's compliance with
25 the plan; AND

26 (6) REQUIRE THE HEALTH MAINTENANCE ORGANIZATION TO INCLUDE
27 A COPY OF EACH CURRENT ANNUAL FINANCIAL STATEMENT OBTAINED UNDER ITEM
28 (2) OF THIS SUBSECTION IN ITS ANNUAL REPORT FILED UNDER § 19-717 OF THIS
29 SUBTITLE.

30 (D) A SEGREGATED FUND ESTABLISHED AS A RESULT OF AN ADMINISTRATIVE
31 SERVICE PROVIDER CONTRACT MAY NOT BE CONSIDERED AN ASSET OR AN ACCOUNT
32 OF THE CONTRACTING PROVIDER FOR THE PURPOSES OF DETERMINING THE ASSETS
33 AND ACCOUNTS OF A BANKRUPT CONTRACTING PROVIDER.

34 [(d)] (E) The health maintenance organization and the contracting provider
35 shall comply with the plan.

36 [(e)] (F) (1) The health maintenance organization shall monitor the
37 contracting provider to assure compliance with the plan, and the health maintenance
38 organization shall notify the contracting provider whenever a failure to comply with
39 the plan occurs.

1 (2) (I) [Upon] SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,
2 UPON the failure of the contracting provider to comply with the plan following notice
3 of noncompliance, or upon termination of the administrative service provider contract
4 for any reason, the health maintenance organization shall assume the FINANCIAL
5 RESPONSIBILITY FOR AND THE administration of any payments due UNDER THE
6 ADMINISTRATIVE SERVICE PROVIDER CONTRACT from the contracting provider to
7 external providers on behalf of the contracting provider.

8 (II) THE FINANCIAL AND ADMINISTRATIVE RESPONSIBILITIES OF A
9 HEALTH MAINTENANCE ORGANIZATION UNDER AN ADMINISTRATIVE SERVICE
10 PROVIDER CONTRACT:

11 1. ARE NOT LIMITED BY THE VALUE OF THE ASSETS OF A
12 SEGREGATED FUND ESTABLISHED UNDER AN ADMINISTRATIVE SERVICE PROVIDER
13 CONTRACT;

14 2. EXIST IRRESPECTIVE OF WHETHER THE CONTRACTING
15 PROVIDER IS INSOLVENT; AND

16 3. EXIST IRRESPECTIVE OF ANY CONTRARY OR LIMITING
17 CONTRACT PROVISION.

18 [(f)] (G) The plan and all supporting documentation submitted in connection
19 with the plan shall be treated as confidential and proprietary, and may not be
20 disclosed except as otherwise required by law.

21 [(g)] (H) On July 1, 1991, any health maintenance organization which has
22 existing contracts or arrangements subject to this section shall file a plan under this
23 section within 120 days.

24 SECTION 2. AND BE IT FURTHER ENACTED, That the Maryland Insurance
25 Administration shall report to the Governor, and, in accordance with § 2-1246 of the
26 State Government Article, to the General Assembly on or before December 1, 2000 on
27 the effects of this Act and any recommendations for further legislative or regulatory
28 action related to administrative service provider contracts.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency
30 measure, is necessary for the immediate preservation of the public health and safety,
31 has been passed by a ye and nay vote supported by three-fifths of all the members
32 elected to each of the two Houses of the General Assembly, and shall take effect from
33 the date it is enacted.

