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By: ~~Delegate Hubbard~~ Delegates Hubbard, Nathan-Pulliam, Frank, Benson, Boteler, Boutin, Bromwell, Costa, Donoghue, Elliott, Goldwater, Hammen, Hurson, Kullen, Mandel, McDonough, Morhaim, Murray, Oaks, Pendergrass, Rudolph, V. Turner, and Weldon

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Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 22, 2005

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Maryland Medical Assistance Program - Medical Loss Ratio –~~Appeals and~~**  
3 **Quality of Care**

4 FOR the purpose of authorizing a managed care organization or a certified health  
5 maintenance organization to appeal certain decisions of the Secretary of Health  
6 and Mental Hygiene that adjust capitation payments based on a certain medical  
7 loss ratio; ~~and generally relating to the Maryland Medical Assistance Program~~  
8 ~~and medical loss ratio requiring the Secretary to adopt certain regulations prior~~  
9 ~~to making a certain adjustment to capitation payments; authorizing the~~  
10 ~~Secretary to modify, enhance, or replace the Value Based Purchasing Initiative~~  
11 ~~in effect on a certain date, subject to certain conditions; and generally relating to~~  
12 ~~the Maryland Medical Assistance Program, medical loss ratio, and quality of~~  
13 ~~care.~~

14 BY repealing and reenacting, without amendments,  
15 Article - Insurance  
16 Section 15-605(c)(5), (c)(6), and (c)(7)  
17 Annotated Code of Maryland  
18 (2002 Replacement Volume and 2004 Supplement)

19 BY adding to  
20 Article - Insurance  
21 Section 15-605(c)(8)  
22 Annotated Code of Maryland

1 (2002 Replacement Volume and 2004 Supplement)

2 BY repealing and reenacting, without amendments,

3 Article - Health - General

4 Section 2-207

5 Annotated Code of Maryland

6 (2000 Replacement Volume and 2004 Supplement)

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

9 **Article - Insurance**

10 15-605.

11 (c) (5) The Secretary of Health and Mental Hygiene, in consultation with  
12 the Commissioner and in accordance with their memorandum of understanding, may  
13 adjust capitation payments for a managed care organization or for the Maryland  
14 Medical Assistance Program of a managed care organization that is a certified health  
15 maintenance organization:

16 (i) if the loss ratio is less than 80% during calendar year 1997; and

17 (ii) during each subsequent calendar year if the loss ratio is less  
18 than 85%.

19 (6) A loss ratio reported under paragraph (5) of this subsection shall be  
20 calculated separately and may not be part of another loss ratio reported under this  
21 section.

22 (7) Any rebate received by a managed care organization may not be  
23 considered part of the loss ratio of the managed care organization.

24 (8) IF THE SECRETARY OF HEALTH AND MENTAL HYGIENE ADJUSTS  
25 CAPITATION PAYMENTS FOR A MANAGED CARE ORGANIZATION OR A CERTIFIED  
26 HEALTH MAINTENANCE ORGANIZATION UNDER PARAGRAPH (5) OF THIS  
27 SUBSECTION, THE MANAGED CARE ORGANIZATION OR CERTIFIED HEALTH  
28 MAINTENANCE ORGANIZATION MAY:

29 (I) APPEAL THAT DECISION TO THE BOARD OF REVIEW; AND

30 (II) TAKE ANY FURTHER APPEAL ALLOWED BY THE  
31 ADMINISTRATIVE PROCEDURE ACT.

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**Article - Health - General**

2 2-207.

3 (a) If any person is aggrieved by any decision, action, or inaction on the part of  
4 the Secretary or of any unit in the Department for which an appeal to the Board is  
5 provided by this subtitle, that person is entitled to appeal as provided in this section.

6 (b) Except as provided in subsection (e)(2) of this section, before beginning an  
7 appeal, the person aggrieved shall make known the basis of the complaint to the  
8 individual responsible for the decision, action, or inaction complained of, together  
9 with a request for review. If, within 30 days after the request, a resolution  
10 satisfactory to the complainant does not occur, the complainant may file a statement  
11 of complaint in accordance with subsection (c) of this section.

12 (c) The complainant shall file a detailed written statement of the complaint  
13 and all relevant facts and circumstances with the chief executive officer of the  
14 Department or unit in the Department to which application for review is made. If  
15 there is no chief executive officer, the statement may be filed with any member of the  
16 unit's governing body. The complaint shall be acknowledged promptly in writing, and  
17 a copy of the complaint and acknowledgment shall be sent to the Secretary.

18 (d) (1) The Department or unit then shall investigate the complaint. Subject  
19 to extensions of time to which the parties may agree, the Department or unit shall  
20 give a written decision and send a copy of it to the complainant within 30 days after  
21 the filing of the complaint.

22 (2) A record shall be kept of each complaint and its disposition. The  
23 record shall be open to public inspection during regular business hours.

24 (e) (1) If the matter is one for which an appeal to the Board is provided by  
25 this subtitle, a complainant aggrieved by an adverse decision or action or by inaction  
26 within the time required by subsection (d) of this section may file an appeal to the  
27 Board.

28 (2) Subject to § 10-212 of the State Government Article, any party  
29 aggrieved by a decision in a contested case for which an appeal is provided to the  
30 Board may appeal directly to the Board.

31 (f) (1) The Board shall adopt procedural rules and regulations as provided  
32 in the Administrative Procedure Act and in all respects shall be governed by that Act.  
33 At least 3 members shall sit at each hearing of the Board when it sits as a board of  
34 appeal. Decisions shall be by a majority of the members sitting, shall be in writing,  
35 and shall state the Board's reasons. The Board shall keep minutes of its proceedings.

36 (2) A decision of the Board is a final agency decision for purposes of  
37 judicial review under the Administrative Procedure Act or any other law that permits  
38 an appeal to the courts from a decision of a unit in the Department.

1 (g) (1) As to any issue for which the taking of evidence is authorized, the  
2 chairman or the acting chairman may administer oaths and issue subpoenas and  
3 orders for the attendance of witnesses and the production of evidence.

4 (2) If a person fails to comply with a lawful order or subpoena issued  
5 under this subsection, on the petition of the chairman or acting chairman, a court of  
6 competent jurisdiction may compel obedience to the order or subpoena or compel  
7 testimony or the production of evidence.

8 (h) Unless there is a special provision of law governing an appeal of a decision  
9 of a particular unit, each appeal from a decision of the Board shall be governed by the  
10 Administrative Procedure Act.

11 SECTION 2. AND BE IT FURTHER ENACTED, That:

12 (a) Prior to making any adjustments to capitation payments for a managed  
13 care organization, the Secretary of Health and Mental Hygiene, in consultation with  
14 the Maryland Insurance Commissioner, shall adopt regulations to implement the  
15 provisions of § 15-605(c)(5) of the Insurance Article.

16 (b) The regulations adopted under subsection (a) of this section shall:

17 (1) establish the definition of "loss ratio" for uniform application by all  
18 managed care organizations;

19 (2) establish procedures requiring the Secretary of Health and Mental  
20 Hygiene to consider the financial performance of a managed care organization in  
21 prior periods;

22 (3) establish standard data collection and reporting requirements for all  
23 managed care organizations;

24 (4) consistent with the provisions of § 15-605(c)(5) of the Insurance  
25 Article, establish a process for allowing a managed care organization to appeal a  
26 decision of the Secretary of Health and Mental Hygiene to adjust a managed care  
27 organization's capitation payments; and

28 (5) establish a mechanism for, and conditions under which, an  
29 adjustment to the capitation rates of a managed care organization are made.

30 (c) The Secretary of Health and Mental Hygiene shall adopt any additional  
31 regulations necessary to carry out the provisions of § 15-605(c)(5) of the Insurance  
32 Article and the goals of the HealthChoice Program.

33 SECTION 3. AND BE IT FURTHER ENACTED, That, as part of the ongoing  
34 efforts of the Department of Health and Mental Hygiene to ensure that managed care  
35 organizations deliver quality health care to their members, the Department may  
36 modify, enhance, or replace the Value Based Purchasing Initiative in effect on  
37 January 1, 2005, provided that:

1           (1)     except as provided in item (4) of this section, any changes to the core  
2 set of performance measures and the methodology for penalties, rewards,  
3 disincentives, or incentives shall be adopted by regulation prior to the calendar year  
4 for which the managed care organizations will be held accountable for the standard;

5           (2)     except as provided in item (4) of this section, the Secretary of Health  
6 and Mental Hygiene shall notify managed care organizations of the core set of  
7 performance measures and targets at least 3 months prior to the calendar year for  
8 which the managed care organizations will be held accountable to the standard;

9           (3)     any penalty or capitation adjustment imposed under this section on a  
10 managed care organization may not be accomplished by means of a capitation  
11 withhold; and

12           (4)     with respect to the performance measures for calendar year 2005, the  
13 Secretary of Health and Mental Hygiene may modify the ranges or targets of the core  
14 set of performance measures without complying with the provisions of items (1) and  
15 (2) of this section, provided that the dollar amounts of any financial rewards or  
16 disincentives shall be calculated as set forth in the Value Based Purchasing Initiative  
17 in effect on January 1, 2005.

18       SECTION ~~2-4.~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take  
19 effect ~~October~~ June 1, 2005.