

SB0638/217477/1

BY: Finance Committee

AMENDMENTS TO SENATE BILL 638

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Discrimination or Rebates –”; in line 3, after “Programs” insert “– Incentives”; strike beginning with “altering” in line 4 down through “for” in line 5 and substitute “authorizing”; in line 7, after “program” insert “under certain circumstances”; strike beginning with “providing” in line 7 down through “requirements;” in line 10 and substitute “authorizing a carrier to condition an incentive for a bona fide wellness program on an individual satisfying a standard that is related to a health factor under certain circumstances;”; strike beginning with “providing” in line 11 down through “met;” in line 13 and substitute “establishing requirements for certain alternative standards or waivers of certain standards;”; in line 14, after “requirements;” insert “authorizing the Maryland Insurance Commissioner to request a review of a bona fide wellness program; requiring the expense of the review to be paid in a certain manner; altering the conditions under which it is not discrimination or a rebate for a carrier to provide reasonable incentives for participation in a bona fide wellness program; making certain provisions applicable to health maintenance organizations;”; in the same line, after “terms;” insert “altering certain definitions;”; strike beginning with “exceptions” in line 14 down through “for” in line 15 and substitute “incentives for participation in”; after line 16, insert:

“BY adding to

Article – Health – General

Section 19–706(ttt)

Annotated Code of Maryland

(2005) Replacement Volume and 2008 Supplement

BY adding to

Article – Insurance

Section 15–509

(Over)

Annotated Code of Maryland
(2006 Replacement Volume and 2008 Supplement)”;

in line 19, after “Section” insert “15-10A-01(a), 15-1201(a) and”; and in line 24, after “Section” insert “15-10A-01(b)(1), 15-1201(r), and”.

AMENDMENT NO. 2

On page 1, after line 28, insert:

“Article – Health – General

19-706.

(TTT) THE PROVISIONS OF § 15-509 OF THE INSURANCE ARTICLE APPLY TO HEALTH MAINTENANCE ORGANIZATIONS.”

AMENDMENT NO. 3

On page 2, after line 1, insert:

“15-509.

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

(2) “BONA FIDE WELLNESS PROGRAM” MEANS A PROGRAM THAT IS DESIGNED TO:

(I) PROMOTE HEALTH OR PREVENT OR DETECT DISEASE OR ILLNESS;

(II) REDUCE OR AVOID POOR CLINICAL OUTCOMES;

(III) PREVENT COMPLICATIONS FROM MEDICAL CONDITIONS;

(IV) PROMOTE HEALTHY BEHAVIORS; OR

(V) PREVENT AND CONTROL INJURY.

(3) "CARRIER" MEANS:

(I) AN INSURER;

(II) A NONPROFIT HEALTH SERVICE PLAN;

(III) A HEALTH MAINTENANCE ORGANIZATION; OR

(IV) A DENTAL PLAN ORGANIZATION.

(4) "HEALTH FACTOR" MEANS, IN RELATION TO AN INDIVIDUAL, ANY OF THE FOLLOWING HEALTH STATUS-RELATED FACTORS:

(I) HEALTH STATUS;

(II) MEDICAL CONDITION;

(III) CLAIMS EXPERIENCE;

(IV) RECEIPT OF HEALTH CARE;

(V) MEDICAL HISTORY;

(VI) EVIDENCE OF INSURABILITY; OR

(VII) DISABILITY.

(5) "INCENTIVE" MEANS:

(I) A DISCOUNT OF A PREMIUM OR CONTRIBUTION;

(II) A WAIVER OF ALL OR PART OF A COST-SHARING MECHANISM, SUCH AS DEDUCTIBLES, COPAYMENTS, OR COINSURANCE;

(III) THE ABSENCE OF A SURCHARGE;

(IV) THE VALUE OF A BENEFIT THAT OTHERWISE WOULD NOT BE PROVIDED UNDER THE POLICY OR CONTRACT; OR

(V) A REBATE AS PERMITTED UNDER § 27-210 OF THIS ARTICLE.

(B) (1) A CARRIER MAY PROVIDE REASONABLE INCENTIVES TO AN INDIVIDUAL WHO IS AN INSURED, A SUBSCRIBER, OR A MEMBER FOR PARTICIPATION IN A BONA FIDE WELLNESS PROGRAM OFFERED BY THE CARRIER IF:

(I) THE CARRIER DOES NOT MAKE PARTICIPATION IN THE BONA FIDE WELLNESS PROGRAM A CONDITION OF COVERAGE UNDER A POLICY OR CONTRACT;

(II) PARTICIPATION IN THE BONA FIDE WELLNESS PROGRAM IS VOLUNTARY AND A PENALTY IS NOT IMPOSED ON AN INSURED, SUBSCRIBER, OR MEMBER FOR NONPARTICIPATION;

(III) THE CARRIER DOES NOT MARKET THE BONA FIDE WELLNESS PROGRAM IN A MANNER THAT REASONABLY COULD BE CONSTRUED TO HAVE AS ITS PRIMARY PURPOSE THE PROVISION OF AN INCENTIVE OR INDUCEMENT TO PURCHASE COVERAGE FROM THE CARRIER; AND

(IV) THE BONA FIDE WELLNESS PROGRAM DOES NOT CONDITION AN INCENTIVE ON AN INDIVIDUAL SATISFYING A STANDARD THAT IS RELATED TO A HEALTH FACTOR.

(2) NOTWITHSTANDING PARAGRAPH (1)(IV) OF THIS SUBSECTION, A CARRIER MAY CONDITION AN INCENTIVE FOR A BONA FIDE WELLNESS PROGRAM ON AN INDIVIDUAL SATISFYING A STANDARD THAT IS RELATED TO A HEALTH FACTOR IF:

(I) 1. ALL INCENTIVES FOR PARTICIPATION IN THE BONA FIDE WELLNESS PROGRAM DO NOT EXCEED 20% OF THE COST OF EMPLOYEE-ONLY COVERAGE UNDER THE PLAN; OR

2. WHEN THE PLAN PROVIDES COVERAGE FOR FAMILY MEMBERS, ALL INCENTIVES FOR PARTICIPATION IN THE BONA FIDE WELLNESS PROGRAM DO NOT EXCEED 20% OF THE COST OF THE COVERAGE IN WHICH THE FAMILY MEMBERS ARE ENROLLED;

(II) THE BONA FIDE WELLNESS PROGRAM IS REASONABLY DESIGNED TO PROMOTE HEALTH OR PREVENT DISEASE, AS PROVIDED UNDER SUBSECTION (C) OF THIS SECTION;

(Over)

(III) THE BONA FIDE WELLNESS PROGRAM GIVES INDIVIDUALS ELIGIBLE FOR THE BONA FIDE WELLNESS PROGRAM THE OPPORTUNITY TO QUALIFY FOR THE INCENTIVE UNDER THE BONA FIDE WELLNESS PROGRAM AT LEAST ONCE A YEAR;

(IV) THE BONA FIDE WELLNESS PROGRAM IS AVAILABLE TO ALL SIMILARLY SITUATED INDIVIDUALS; AND

(V) INDIVIDUALS ARE PROVIDED A REASONABLE ALTERNATIVE STANDARD OR A WAIVER OF THE STANDARD AS REQUIRED UNDER SUBSECTION (D)(1) OF THIS SECTION.

(C) A BONA FIDE WELLNESS PROGRAM SHALL BE CONSTRUED TO BE REASONABLY DESIGNED TO PROMOTE HEALTH OR PREVENT DISEASE IF THE BONA FIDE WELLNESS PROGRAM:

(1) HAS A REASONABLE CHANCE OF IMPROVING THE HEALTH OF OR PREVENTING DISEASE IN PARTICIPATING INDIVIDUALS;

(2) IS NOT OVERLY BURDENSOME;

(3) IS NOT A SUBTERFUGE FOR DISCRIMINATING BASED ON A HEALTH FACTOR; AND

(4) IS NOT HIGHLY SUSPECT IN THE METHOD CHOSEN TO PROMOTE HEALTH OR PREVENT DISEASE.

(D) (1) A CARRIER SHALL PROVIDE A REASONABLE ALTERNATIVE STANDARD, OR A WAIVER OF THE OTHERWISE APPLICABLE STANDARD, FOR OBTAINING THE INCENTIVE FOR ANY INDIVIDUAL FOR WHOM IT IS:

(I) UNREASONABLY DIFFICULT DUE TO A MEDICAL CONDITION TO SATISFY THE OTHERWISE APPLICABLE STANDARD; OR

(II) MEDICALLY INADVISABLE TO ATTEMPT TO SATISFY THE OTHERWISE APPLICABLE STANDARD.

(2) A CARRIER MAY SEEK VERIFICATION, SUCH AS A STATEMENT FROM AN INDIVIDUAL'S HEALTH CARE PROVIDER, THAT A HEALTH FACTOR MAKES IT UNREASONABLY DIFFICULT OR MEDICALLY INADVISABLE FOR THE INDIVIDUAL TO SATISFY OR ATTEMPT TO SATISFY THE OTHERWISE APPLICABLE STANDARD.

(3) (I) A CARRIER SHALL DISCLOSE THE AVAILABILITY OF A REASONABLE ALTERNATIVE STANDARD OR A WAIVER OF THE OTHERWISE APPLICABLE STANDARD IN ALL POLICY FORMS PERTAINING TO THE BONA FIDE WELLNESS PROGRAM.

(II) A CARRIER MAY MEET THE DISCLOSURE REQUIREMENTS OF THIS PARAGRAPH BY USING THE FOLLOWING LANGUAGE OR SUBSTANTIALLY SIMILAR LANGUAGE:

"IF IT IS UNREASONABLY DIFFICULT DUE TO A MEDICAL CONDITION FOR YOU TO ACHIEVE THE STANDARDS FOR THE INCENTIVE UNDER THIS PROGRAM, OR IF IT IS MEDICALLY INADVISABLE FOR YOU TO ATTEMPT TO ACHIEVE THE STANDARDS FOR THE INCENTIVE UNDER THIS PROGRAM, CALL US AT (INSERT

TELEPHONE NUMBER), AND WE WILL WORK WITH YOU TO DEVELOP ANOTHER WAY TO QUALIFY FOR THE INCENTIVE.”.

(E) (1) IN DETERMINING IF A CARRIER’S BONA FIDE WELLNESS PROGRAM MEETS THE REQUIREMENTS OF THIS SECTION, THE COMMISSIONER MAY REQUEST A REVIEW OF THE BONA FIDE WELLNESS PROGRAM BY AN INDEPENDENT REVIEW ORGANIZATION FROM THE LIST COMPILED UNDER § 15-10A-05(B) OF THIS TITLE.

(2) THE EXPENSE OF THE REVIEW OF THE BONA FIDE WELLNESS PROGRAM BY AN INDEPENDENT REVIEW ORGANIZATION SHALL BE PAID BY THE CARRIER, IN THE MANNER PROVIDED UNDER § 15-10A-05(H) OF THIS TITLE.

15-10A-01.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) “Adverse decision” means:

(I) a utilization review determination by a private review agent, a carrier, or a health care provider acting on behalf of a carrier that:

[(i)] 1. a proposed or delivered health care service covered under the member’s contract is or was not medically necessary, appropriate, or efficient; and

[(ii)] 2. may result in noncoverage of the health care service;

OR

(II) A DENIAL BY A CARRIER OF A REQUEST BY A MEMBER FOR AN ALTERNATIVE STANDARD OR A WAIVER OF A STANDARD TO SATISFY THE REQUIREMENTS OF A BONA FIDE WELLNESS PROGRAM UNDER § 15-509 OF THIS TITLE.

15-1201.

(a) In this subtitle the following words have the meanings indicated.

(r) “Wellness benefit” means a benefit [offered as a rider to a health benefit plan that provides coverage for a program or activity] that:

(1) [is designed to:

(i) prevent or detect disease or illness;

(ii) reduce or avoid poor clinical outcomes;

(iii) prevent complications from medical conditions; or

(iv) promote healthy behaviors and lifestyle choices;] INCLUDES A BONA FIDE WELLNESS PROGRAM AS DEFINED IN § 15-509 OF THIS TITLE; and

(2) complies with regulations adopted by the Commission.”.

AMENDMENT NO. 4

On pages 2 and 3, strike in their entirety the lines beginning with line 6 on page 2 through line 11 on page 3, inclusive, and substitute:

(Over)

“(H) (1) IN THIS SUBSECTION, “BONA FIDE WELLNESS PROGRAM” HAS THE MEANING STATED IN § 15-509 OF THIS ARTICLE.”.

On pages 3 and 4, strike beginning with “if” in line 14 on page 3 down through “SUBSECTION” in line 7 on page 4 and substitute **“IN ACCORDANCE WITH § 15-509 OF THIS ARTICLE”.**

On page 4, in lines 8 and 13, in each instance, strike the bracket.

On pages 4 through 6, strike in their entirety the lines beginning with line 14 on page 4 through line 11 on page 6, inclusive.

On page 6, in line 12, strike the brackets; and in the same line, strike **“(7)”**.