

HOUSE BILL 255

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By: **Delegates Pena–Melnik and Costa**
Introduced and read first time: January 29, 2009
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Health Maintenance Organizations – Payments to Nonparticipating**
3 **Providers**

4 FOR the purpose of altering the rate that a health maintenance organization must pay
5 to certain trauma physicians for certain covered services provided to certain
6 enrollees of the health maintenance organization; requiring health maintenance
7 organizations to pay certain health care providers for certain evaluation and
8 management services no less than the greater of certain rates; requiring health
9 maintenance organizations to pay certain health care providers for certain
10 services that are not evaluation and management services no less than the
11 greater of certain rates; requiring the Maryland Health Care Commission to
12 annually review certain payments and report certain findings to the Maryland
13 Insurance Administration; authorizing the Administration to take certain
14 actions to investigate and enforce a violation of certain provisions of this Act;
15 requiring the Administration, in consultation with the Commission, to adopt
16 certain regulations; defining certain terms; providing for a delayed effective
17 date; providing for the termination of this Act; and generally relating to
18 payments by health maintenance organizations to nonparticipating providers.

19 BY repealing and reenacting, with amendments,
20 Article – Health – General
21 Section 19–710.1
22 Annotated Code of Maryland
23 (2005 Replacement Volume and 2008 Supplement)

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

26 **Article – Health – General**

27 19–710.1.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

4 (3) "Adjunct claims documentation" means an abstract of an enrollee's
5 medical record which describes and summarizes the diagnosis and treatment of, and
6 services rendered to, the enrollee, including, in the case of trauma rendered in a
7 trauma center, an operative report, a discharge summary, a Maryland Ambulance
8 Information Systems form, or a medical record.

9 (3) **"BERENSON-EGGERS TYPE OF SERVICE CODE" MEANS A**
10 **CODE IN A CLASSIFICATION SYSTEM DEVELOPED BY THE CENTERS FOR**
11 **MEDICARE AND MEDICAID SERVICES THAT GROUPS CURRENT PROCEDURAL**
12 **TERMINOLOGY CODES TOGETHER BASED ON CLINICAL CONSISTENCY.**

13 (4) **"ENROLLEE" MEANS A SUBSCRIBER OR MEMBER OF A**
14 **HEALTH MAINTENANCE ORGANIZATION.**

15 (5) **"EVALUATION AND MANAGEMENT SERVICE" MEANS ANY**
16 **SERVICE WITH A BERENSON-EGGERS TYPE OF SERVICE CODE IN THE**
17 **CATEGORY OF EVALUATION AND MANAGEMENT.**

18 [(4)] (6) "Institute" means the Maryland Institute for Emergency
19 Medical Services Systems.

20 (7) **"MEDICARE ECONOMIC INDEX" MEANS THE FIXED-WEIGHT**
21 **INPUT PRICE INDEX THAT:**

22 (I) **MEASURES THE WEIGHTED AVERAGE ANNUAL PRICE**
23 **CHANGE FOR VARIOUS INPUTS NEEDED TO PRODUCE PHYSICIAN SERVICES; AND**

24 (II) **IS USED BY THE CENTERS FOR MEDICARE AND**
25 **MEDICAID SERVICES IN THE CALCULATION OF REIMBURSEMENT OF PHYSICIAN**
26 **SERVICES UNDER TITLE XVIII OF THE FEDERAL SOCIAL SECURITY ACT.**

27 (8) **"SIMILARLY LICENSED PROVIDER" MEANS:**

28 (I) **FOR A PHYSICIAN:**

29 1. **A PHYSICIAN WHO IS BOARD CERTIFIED OR**
30 **ELIGIBLE IN THE SAME PRACTICE SPECIALTY; OR**

1 **2. A GROUP PHYSICIAN PRACTICE THAT CONTAINS**
2 **BOARD CERTIFIED OR ELIGIBLE PHYSICIANS IN THE SAME PRACTICE**
3 **SPECIALTY;**

4 **(II) FOR A HEALTH CARE PROVIDER THAT IS NOT A**
5 **PHYSICIAN, A HEALTH CARE PROVIDER THAT HOLDS THE SAME TYPE OF**
6 **LICENSE.**

7 **[(5)] (9)** (i) “Trauma center” means a primary adult resource
8 center, level I trauma center, level II trauma center, level III trauma center, or
9 pediatric trauma center that has been designated by the institute to provide care to
10 trauma patients.

11 (ii) “Trauma center” includes an out-of-state pediatric facility
12 that has entered into an agreement with the institute to provide care to trauma
13 patients.

14 **[(6)] (10)** “Trauma patient” means a patient that is evaluated or
15 treated in a trauma center and is entered into the State trauma registry as a trauma
16 patient.

17 **[(7)] (11)** “Trauma physician” means a licensed physician who has
18 been credentialed or designated by a trauma center to provide care to a trauma
19 patient at a trauma center.

20 (b) **[(1)]** In addition to any other provisions of this subtitle, for a covered
21 service rendered to an enrollee of a health maintenance organization by a health care
22 provider not under written contract with the health maintenance organization, the
23 health maintenance organization or its agent:

24 **[(i)] (1)** Shall pay the health care provider within 30 days
25 after the receipt of a claim in accordance with the applicable provisions of this subtitle;
26 and

27 **[(ii)] (2)** Shall pay the claim submitted by:

28 **[1.] (I)** A hospital at the rate approved by the Health
29 Services Cost Review Commission;

30 **[2.] (II)** A trauma physician for trauma care rendered
31 to a trauma patient in a trauma center, at the greater of:

32 **[A.] 1.** [140% of the rate paid by the Medicare
33 program, as published by the Centers for Medicare and Medicaid Services, for the
34 same covered service, to a similarly licensed provider] **125% OF THE AVERAGE RATE**
35 **THE HEALTH MAINTENANCE ORGANIZATION PAID AS OF JANUARY 1 OF THE**

1 PREVIOUS CALENDAR YEAR IN THE SAME GEOGRAPHIC AREA, AS DEFINED BY
2 THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, FOR THE SAME
3 COVERED SERVICE, TO SIMILARLY LICENSED PROVIDERS UNDER WRITTEN
4 CONTRACT WITH THE HEALTH MAINTENANCE ORGANIZATION; or

5 [B.] 2. [The rate as of January 1, 2001 that the health
6 maintenance organization paid in the same geographic area, as published by the
7 Centers for Medicare and Medicaid Services, for the same covered service, to a
8 similarly licensed provider] **140% OF THE RATE PAID BY MEDICARE, AS
9 PUBLISHED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, FOR
10 THE SAME COVERED SERVICE TO A SIMILARLY LICENSED PROVIDER IN THE
11 SAME GEOGRAPHIC AREA AS OF AUGUST 1, 2008, INFLATED BY THE CHANGE IN
12 THE MEDICARE ECONOMIC INDEX FROM 2008 TO THE CURRENT YEAR; and**

13 [3.] (III) Any other health care provider:

14 1. FOR AN EVALUATION AND MANAGEMENT
15 SERVICE, NO LESS THAN [at] the greater of:

16 A. [125% of the rate the health maintenance
17 organization pays in the same geographic area, as published by the Centers for
18 Medicare and Medicaid Services, for the same covered service, to a similarly licensed
19 provider under written contract with the health maintenance organization] **125% OF
20 THE AVERAGE RATE THE HEALTH MAINTENANCE ORGANIZATION PAID AS OF
21 JANUARY 1 OF THE PREVIOUS CALENDAR YEAR IN THE SAME GEOGRAPHIC
22 AREA, AS DEFINED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES,
23 FOR THE SAME COVERED SERVICE, TO SIMILARLY LICENSED PROVIDERS UNDER
24 WRITTEN CONTRACT WITH THE HEALTH MAINTENANCE ORGANIZATION; or**

25 B. [The rate as of January 1, 2000 that the health
26 maintenance organization paid in the same geographic area, as published by the
27 Centers for Medicare and Medicaid Services, for the same covered service, to a
28 similarly licensed provider not under written contract with the health maintenance
29 organization.] **140% OF THE RATE PAID BY MEDICARE, AS PUBLISHED BY THE
30 CENTERS FOR MEDICARE AND MEDICAID SERVICES, FOR THE SAME COVERED
31 SERVICE TO A SIMILARLY LICENSED PROVIDER IN THE SAME GEOGRAPHIC AREA
32 AS OF AUGUST 1, 2008, INFLATED BY THE CHANGE IN THE MEDICARE
33 ECONOMIC INDEX FROM 2008 TO THE CURRENT YEAR; AND**

34 2. FOR A SERVICE THAT IS NOT AN EVALUATION AND
35 MANAGEMENT SERVICE, NO LESS THAN **125% OF THE AVERAGE RATE THE
36 HEALTH MAINTENANCE ORGANIZATION PAID AS OF JANUARY 1 OF THE
37 PREVIOUS CALENDAR YEAR IN THE SAME GEOGRAPHIC AREA, AS DEFINED BY
38 THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, TO A SIMILARLY**

1 **LICENSED PROVIDER UNDER WRITTEN CONTRACT WITH THE HEALTH**
2 **MAINTENANCE ORGANIZATION FOR THE SAME COVERED SERVICE.**

3 [(2)] (C) A health maintenance organization shall disclose, on request
4 of a health care provider not under written contract with the health maintenance
5 organization, the reimbursement rate required under paragraph [(1)(i)2 and 3] **(2)(II)**
6 **AND (III)** of this subsection.

7 [(3) (i)](D) (1) Subject to [subparagraph (ii) of this paragraph]
8 **PARAGRAPH (2) OF THIS SUBSECTION**, a health maintenance organization may
9 require a trauma physician not under contract with the health maintenance
10 organization to submit appropriate adjunct claims documentation and to include on
11 the uniform claim form a provider number assigned to the trauma physician by the
12 health maintenance organization.

13 [(ii)] (2) If a health maintenance organization requires a
14 trauma physician to include a provider number on the uniform claim form in
15 accordance with [subparagraph (i) of this paragraph] **PARAGRAPH (1) OF THIS**
16 **SUBSECTION**, the health maintenance organization shall assign a provider number to
17 a trauma physician not under contract with the health maintenance organization at
18 the request of the physician.

19 [(4)] (3) A trauma center, on request from a health maintenance
20 organization, shall verify that a licensed physician is credentialed or otherwise
21 designated by the trauma center to provide trauma care.

22 [(5)] (4) Notwithstanding the provisions of § 19–701(d) of this
23 subtitle, for trauma care rendered to a trauma patient in a trauma center by a trauma
24 physician, a health maintenance organization may not require a referral or
25 preauthorization for a service to be covered.

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

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

35 [(d)] (F) (1) A health care provider may enforce the provisions of this
36 section by filing a complaint against a health maintenance organization with the
37 Maryland Insurance Administration or by filing a civil action in a court of competent
38 jurisdiction under § 1–501 or § 4–201 of the Courts Article.

1 (2) The Maryland Insurance Administration or a court shall award
2 reasonable attorney fees if the complaint of the health care provider is sustained.

3 **(G) THE MARYLAND HEALTH CARE COMMISSION ANNUALLY SHALL**
4 **REVIEW PAYMENTS TO HEALTH CARE PROVIDERS TO DETERMINE THE**
5 **COMPLIANCE OF HEALTH MAINTENANCE ORGANIZATIONS WITH THE**
6 **REQUIREMENTS OF THIS SECTION AND REPORT ITS FINDINGS TO THE**
7 **MARYLAND INSURANCE ADMINISTRATION.**

8 **(H) THE MARYLAND INSURANCE ADMINISTRATION MAY TAKE ANY**
9 **ACTION AUTHORIZED UNDER THIS SUBTITLE OR THE INSURANCE ARTICLE,**
10 **INCLUDING CONDUCTING AN EXAMINATION UNDER TITLE 2, SUBTITLE 2 OF THE**
11 **INSURANCE ARTICLE, TO INVESTIGATE AND ENFORCE A VIOLATION OF THE**
12 **PROVISIONS OF THIS SECTION.**

13 [(e)] (I) In addition to any other penalties under this subtitle, the
14 Commissioner may impose a penalty not to exceed \$5,000 on any health maintenance
15 organization which violates the provisions of this section if the violation is committed
16 with such frequency as to indicate a general business practice of the health
17 maintenance organization.

18 **(J) THE MARYLAND INSURANCE ADMINISTRATION, IN CONSULTATION**
19 **WITH THE MARYLAND HEALTH CARE COMMISSION, SHALL ADOPT**
20 **REGULATIONS TO IMPLEMENT THIS SECTION.**

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 January 1, 2010. It shall remain effective for a period 5 years and, at the end of
23 December 31, 2014, with no further action required by the General Assembly, this Act
24 shall be abrogated and of no further force and effect.