

HOUSE BILL 610

C3

9lr1295
CF SB 638

By: ~~Delegate Morhaim~~ Delegates Morhaim, Hammen, Pendergrass, Benson, Bromwell, Costa, Donoghue, Elliott, Hubbard, Kach, Kipke, Krebs, Kullen, McDonough, Montgomery, Nathan-Pulliam, Oaks, Pena-Melnyk, Reznik, Riley, Tarrant, V. Turner, and Weldon

Introduced and read first time: February 6, 2009

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 11, 2009

CHAPTER _____

1 AN ACT concerning

2 **Health Insurance – ~~Discrimination or Rebates~~ – Bona Fide Wellness**
3 **Programs – Incentives**

4 FOR the purpose of ~~altering the conditions under which it is not discrimination or a~~
5 ~~rebate for~~ authorizing an insurer, a nonprofit health service plan, a health
6 maintenance organization, or a dental plan organization to provide reasonable
7 incentives for participation in a bona fide wellness program under certain
8 circumstances; ~~providing that it is not discrimination or a rebate for a carrier to~~
9 ~~provide reasonable incentives for participation in a bona fide wellness program~~
10 ~~if the bona fide wellness program satisfies certain requirements~~; authorizing a
11 carrier to condition an incentive for a bona fide wellness program on an
12 individual satisfying a standard that is related to a health factor under certain
13 circumstances; providing that a bona fide wellness program shall be construed
14 in a certain manner if certain conditions are met; ~~providing that an incentive~~
15 ~~may not be construed in a certain manner unless certain conditions are met~~;
16 establishing requirements for certain alternative standards or waivers of
17 certain standards; authorizing the use of certain language to satisfy certain
18 requirements; authorizing the Maryland Insurance Commissioner to request a
19 review of a bona fide wellness program; requiring the expense of the review to
20 be paid in a certain manner; altering the conditions under which it is not
21 discrimination or a rebate for a carrier to provide reasonable incentives for
22 participation in a bona fide wellness program; making certain provisions
23 applicable to health maintenance organizations; defining certain terms; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 generally relating to ~~exceptions to prohibitions against discrimination or~~
 2 ~~rebates for~~ incentives for participation in bona fide wellness programs offered
 3 with health insurance.

4 BY adding to

5 Article – Health – General
 6 Section 19–706(ttt)
 7 Annotated Code of Maryland
 8 (2005 Replacement Volume and 2008 Supplement)

9 BY adding to

10 Article – Insurance
 11 Section 15–509
 12 Annotated Code of Maryland
 13 (2006 Replacement Volume and 2008 Supplement)

14 BY repealing and reenacting, without amendments,

15 Article – Insurance
 16 Section 27–210(a)
 17 Annotated Code of Maryland
 18 (2006 Replacement Volume and 2008 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article – Insurance
 21 Section 27–210(h)
 22 Annotated Code of Maryland
 23 (2006 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 19–706.

28 **(TTT) THE PROVISIONS OF § 15–509 OF THE INSURANCE ARTICLE APPLY**
 29 **TO HEALTH MAINTENANCE ORGANIZATIONS.**

30 **Article – Insurance**

31 **15–509.**

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

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

1 **(I) PROMOTE HEALTH OR PREVENT OR DETECT DISEASE OR**
2 **ILLNESS;**

3 **(II) REDUCE OR AVOID POOR CLINICAL OUTCOMES;**

4 **(III) PREVENT COMPLICATIONS FROM MEDICAL**
5 **CONDITIONS;**

6 **(IV) PROMOTE HEALTHY BEHAVIORS AND LIFESTYLE**
7 **CHOICES; OR**

8 **(V) PREVENT AND CONTROL INJURY.**

9 **(3) "CARRIER" MEANS:**

10 **(I) AN INSURER;**

11 **(II) A NONPROFIT HEALTH SERVICE PLAN;**

12 **(III) A HEALTH MAINTENANCE ORGANIZATION; OR**

13 **(IV) A DENTAL PLAN ORGANIZATION.**

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

16 **(I) HEALTH STATUS;**

17 **(II) MEDICAL CONDITION;**

18 **(III) CLAIMS EXPERIENCE;**

19 **(IV) RECEIPT OF HEALTH CARE;**

20 **(V) MEDICAL HISTORY;**

21 **(VI) GENETIC INFORMATION;**

22 **(VII) EVIDENCE OF INSURABILITY; OR**

23 **(VIII) DISABILITY.**

24 **(5) "INCENTIVE" MEANS:**

1 (I) A DISCOUNT OF A PREMIUM OR CONTRIBUTION;

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

4 (III) THE ABSENCE OF A SURCHARGE;

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

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

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

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

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

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

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

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

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

1 **2. WHEN THE PLAN PROVIDES COVERAGE FOR A**
2 **SPOUSE OR DEPENDENT CHILDREN, ALL INCENTIVES FOR PARTICIPATION IN**
3 **THE BONA FIDE WELLNESS PROGRAM DO NOT EXCEED 20% OF THE COST OF THE**
4 **COVERAGE IN WHICH THE EMPLOYEE AND THE SPOUSE OR DEPENDENT**
5 **CHILDREN ARE ENROLLED;**

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

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

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

15 **(V) INDIVIDUALS ARE PROVIDED A REASONABLE**
16 **ALTERNATIVE STANDARD OR A WAIVER OF THE STANDARD.**

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

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

22 **(2) IS NOT OVERLY BURDENSOME;**

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

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

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

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

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

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

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

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

13 **“IF IT IS UNREASONABLY DIFFICULT DUE TO A MEDICAL CONDITION FOR**
 14 **YOU TO ACHIEVE THE STANDARDS FOR THE INCENTIVE UNDER THIS PROGRAM,**
 15 **OR IF IT IS MEDICALLY INADVISABLE FOR YOU TO ATTEMPT TO ACHIEVE THE**
 16 **STANDARDS FOR THE INCENTIVE UNDER THIS PROGRAM, CALL US AT (INSERT**
 17 **TELEPHONE NUMBER), AND WE WILL WORK WITH YOU TO DEVELOP ANOTHER**
 18 **WAY TO QUALIFY FOR THE INCENTIVE.”.**

19 **(E) (1) IN DETERMINING IF A CARRIER’S BONA FIDE WELLNESS**
 20 **PROGRAM MEETS THE REQUIREMENTS OF THIS SECTION, THE COMMISSIONER**
 21 **MAY REQUEST A REVIEW OF THE BONA FIDE WELLNESS PROGRAM BY AN**
 22 **INDEPENDENT REVIEW ORGANIZATION FROM THE LIST COMPILED UNDER §**
 23 **15-10A-05(B) OF THIS TITLE.**

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

27 27-210.

28 (a) Sections 27-208 and 27-209 of this subtitle may not be construed to
 29 include within the definition of discrimination or rebates any of the practices set forth
 30 in this section.

31 ~~(h) (1) (i) In this subsection the following words have the meanings~~
 32 ~~indicated.~~

33 ~~(ii) “Bona fide wellness program” means a program that is~~
 34 ~~designed to:~~

1
2 illness;

- 1. ~~PROMOTE HEALTH OR prevent or detect disease or~~
- 2. ~~reduce or avoid poor clinical outcomes;~~
- 3. ~~prevent complications from medical conditions; [or]~~
- 4. ~~promote healthy behaviors and lifestyle choices; OR~~
- 5. ~~PREVENT AND CONTROL INJURY.~~

(iii) ~~“Carrier” means:~~

- 1. ~~an insurer;~~
- 2. ~~a nonprofit health service plan;~~
- 3. ~~a health maintenance organization; or~~
- 4. ~~a dental plan organization.~~

(iv) ~~“HEALTH FACTOR” MEANS, IN RELATION TO AN INDIVIDUAL, ANY OF THE FOLLOWING HEALTH STATUS RELATED FACTORS:~~

- 1. ~~HEALTH STATUS;~~
- 2. ~~MEDICAL CONDITION;~~
- 3. ~~CLAIMS EXPERIENCE;~~
- 4. ~~RECEIPT OF HEALTH CARE;~~
- 5. ~~MEDICAL HISTORY;~~
- 6. ~~GENETIC INFORMATION;~~
- 7. ~~EVIDENCE OF INSURABILITY; OR~~
- 8. ~~DISABILITY.~~

(v) ~~“INCENTIVE” MEANS:~~

1. ~~A DISCOUNT OR REBATE OF A PREMIUM OR CONTRIBUTION;~~

~~2. A WAIVER OF ALL OR PART OF A COST SHARING MECHANISM, SUCH AS DEDUCTIBLES, COPAYMENTS, OR COINSURANCE;~~

~~3. THE ABSENCE OF A SURCHARGE; OR~~

~~4. THE VALUE OF A BENEFIT THAT WOULD OTHERWISE NOT BE PROVIDED UNDER THE POLICY OR CONTRACT.~~

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

(2) It is not discrimination or a rebate for a carrier to 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) an insured, subscriber, or member is not required to achieve any specific outcome in order to receive an incentive for participation in the bona fide wellness program; and]~~

~~[(iv)] (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) 1. THE BONA FIDE WELLNESS PROGRAM DOES NOT CONDITION AN INCENTIVE ON AN INDIVIDUAL SATISFYING A STANDARD THAT IS RELATED TO A HEALTH FACTOR; OR~~

~~2. A. THE BONA FIDE WELLNESS PROGRAM DOES CONDITION AN INCENTIVE ON AN INDIVIDUAL SATISFYING A STANDARD THAT IS RELATED TO A HEALTH FACTOR;~~

~~B. THE USE OF THE HEALTH FACTOR IS NOT OTHERWISE PROHIBITED BY LAW; AND~~

~~C. THE BONA FIDE WELLNESS PROGRAM MEETS THE REQUIREMENTS OF PARAGRAPH (3) OF THIS SUBSECTION IN ACCORDANCE WITH § 15-509 OF THIS ARTICLE.~~

1 ~~¶(3)~~ Any incentive offered for participation in a bona fide wellness
2 program:

3 (i) shall be reasonably related to the bona fide wellness
4 program; and

5 (ii) may not have a value that exceeds any limit established in
6 regulations adopted by the Commissioner.‡

7 ~~(3) AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION, A
8 BONA FIDE WELLNESS PROGRAM MAY CONDITION AN INCENTIVE ON AN
9 INDIVIDUAL SATISFYING A STANDARD THAT IS RELATED TO A HEALTH FACTOR
10 IF:~~

11 ~~(I) 1. ANY INCENTIVE FOR PARTICIPATION IN THE BONA
12 FIDE WELLNESS PROGRAM, COUPLED WITH THE INCENTIVE FOR OTHER BONA
13 FIDE WELLNESS PROGRAMS WITH RESPECT TO THE POLICY OR CONTRACT THAT
14 REQUIRE SATISFACTION OF A STANDARD RELATED TO A HEALTH FACTOR, DOES
15 NOT EXCEED 20% OF THE COST OF EMPLOYEE ONLY COVERAGE UNDER THE
16 PLAN; OR~~

17 ~~2. WHEN THE PLAN PROVIDES COVERAGE FOR A
18 SPOUSE OR DEPENDENT CHILDREN, THE INCENTIVE FOR PARTICIPATION IN
19 THE BONA FIDE WELLNESS PROGRAM DOES NOT EXCEED 20% OF THE COST OF
20 THE COVERAGE IN WHICH THE EMPLOYEE AND THE SPOUSE OR DEPENDENT
21 CHILDREN ARE ENROLLED;~~

22 ~~(II) THE BONA FIDE WELLNESS PROGRAM IS REASONABLY
23 DESIGNED TO PROMOTE HEALTH OR PREVENT DISEASE, AS PROVIDED UNDER
24 PARAGRAPH (4) OF THIS SUBSECTION;~~

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

29 ~~(IV) SUBJECT TO PARAGRAPH (5) OF THIS SUBSECTION, THE
30 BONA FIDE WELLNESS PROGRAM IS AVAILABLE TO ALL SIMILARLY SITUATED
31 INDIVIDUALS; AND~~

32 ~~(V) THE CARRIER DISCLOSES IN ALL POLICY OR CONTRACT
33 MATERIALS DESCRIBING THE TERMS OF THE BONA FIDE WELLNESS PROGRAM
34 THE AVAILABILITY OF A REASONABLE ALTERNATIVE STANDARD OR THE
35 POSSIBILITY OF A WAIVER OF THE OTHERWISE APPLICABLE STANDARD, AS
36 PROVIDED UNDER PARAGRAPHS (5) AND (6) OF THIS SUBSECTION.~~

1 ~~(4) A BONA FIDE WELLNESS PROGRAM SHALL BE CONSTRUED TO~~
2 ~~BE REASONABLY DESIGNED TO PROMOTE HEALTH OR PREVENT DISEASE IF THE~~
3 ~~BONA FIDE WELLNESS PROGRAM:~~

4 ~~(I) HAS A REASONABLE CHANCE OF IMPROVING THE~~
5 ~~HEALTH OF OR PREVENTING DISEASE IN PARTICIPATING INDIVIDUALS; AND~~

6 ~~(H) 1. IS NOT OVERLY BURDENSOME;~~
7 ~~2. IS NOT A SUBTERFUGE FOR DISCRIMINATING~~
8 ~~BASED ON A HEALTH FACTOR; AND~~

9 ~~3. IS NOT HIGHLY SUSPECT IN THE METHOD CHOSEN~~
10 ~~TO PROMOTE HEALTH OR PREVENT DISEASE.~~

11 ~~(5) (I) AN INCENTIVE MAY NOT BE CONSTRUED TO BE~~
12 ~~AVAILABLE TO ALL SIMILARLY SITUATED INDIVIDUALS FOR A PERIOD UNLESS~~
13 ~~THE BONA FIDE WELLNESS PROGRAM ALLOWS A REASONABLE ALTERNATIVE~~
14 ~~STANDARD, OR A WAIVER OF THE OTHERWISE APPLICABLE STANDARD, FOR~~
15 ~~OBTAINING THE INCENTIVE FOR ANY INDIVIDUAL FOR WHOM, FOR THAT~~
16 ~~PERIOD, IT IS:~~

17 ~~1. UNREASONABLY DIFFICULT DUE TO A MEDICAL~~
18 ~~CONDITION TO SATISFY THE OTHERWISE APPLICABLE STANDARD; OR~~

19 ~~2. MEDICALLY INADVISABLE TO ATTEMPT TO~~
20 ~~SATISFY THE OTHERWISE APPLICABLE STANDARD.~~

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

26 ~~(6) THE FOLLOWING LANGUAGE, OR SUBSTANTIALLY SIMILAR~~
27 ~~LANGUAGE, MAY BE USED TO SATISFY THE REQUIREMENTS OF PARAGRAPH~~
28 ~~(3)(V) OF THIS SUBSECTION:~~

29 ~~"IF IT IS UNREASONABLY DIFFICULT DUE TO A MEDICAL CONDITION FOR~~
30 ~~YOU TO ACHIEVE THE STANDARDS FOR THE INCENTIVE UNDER THIS PROGRAM,~~
31 ~~OR IF IT IS MEDICALLY INADVISABLE FOR YOU TO ATTEMPT TO ACHIEVE THE~~
32 ~~STANDARDS FOR THE INCENTIVE UNDER THIS PROGRAM, CALL US AT (INSERT~~
33 ~~TELEPHONE NUMBER), AND WE WILL WORK WITH YOU TO DEVELOP ANOTHER~~
34 ~~WAY TO QUALIFY FOR THE INCENTIVE."~~

1 ~~[(4)] (7)~~ The Commissioner shall adopt regulations to implement the
2 provisions of this subsection.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2009.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.