

# SENATE BILL 380

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CF HB 255

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By: **Senators Garagiola, Astle, Della, Exum, Glassman, Kelley, Kittleman, Klausmeier, Middleton, Pipkin, and Pugh**  
Introduced and read first time: February 2, 2009  
Assigned to: Finance

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## 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**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



1 19-710.1.

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

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

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

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

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

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

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

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

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

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

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

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

30 1. **A PHYSICIAN WHO IS BOARD CERTIFIED OR**  
31 **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.