

SENATE BILL 638

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9lr2130
CF HB 610

By: **Senators Garagiola, Glassman, Kittleman, and Klausmeier**

Introduced and read first time: February 6, 2009

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of altering the conditions under which it is not discrimination or a
5 rebate for an insurer, a nonprofit health service plan, a health maintenance
6 organization, or a dental plan organization to provide reasonable incentives for
7 participation in a bona fide wellness program; providing that it is not
8 discrimination or a rebate for a carrier to provide reasonable incentives for
9 participation in a bona fide wellness program if the bona fide wellness program
10 satisfies certain requirements; providing that a bona fide wellness program
11 shall be construed in a certain manner if certain conditions are met; providing
12 that an incentive may not be construed in a certain manner unless certain
13 conditions are met; authorizing the use of certain language to satisfy certain
14 requirements; defining certain terms; and generally relating to exceptions to
15 prohibitions against discrimination or rebates for bona fide wellness programs
16 offered with health insurance.

17 BY repealing and reenacting, without amendments,
18 Article – Insurance
19 Section 27–210(a)
20 Annotated Code of Maryland
21 (2006 Replacement Volume and 2008 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Insurance
24 Section 27–210(h)
25 Annotated Code of Maryland
26 (2006 Replacement Volume and 2008 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Insurance**

2 27–210.

3 (a) Sections 27–208 and 27–209 of this subtitle may not be construed to
4 include within the definition of discrimination or rebates any of the practices set forth
5 in this section.

6 (h) (1) (i) In this subsection the following words have the meanings
7 indicated.

8 (ii) “Bona fide wellness program” means a program that is
9 designed to:

- 10 1. **PROMOTE HEALTH OR** prevent or detect disease or
11 illness;
- 12 2. reduce or avoid poor clinical outcomes;
- 13 3. prevent complications from medical conditions; or
- 14 4. promote healthy behaviors and lifestyle choices.

15 (iii) “Carrier” means:

- 16 1. an insurer;
- 17 2. a nonprofit health service plan;
- 18 3. a health maintenance organization; or
- 19 4. a dental plan organization.

20 (IV) **“HEALTH FACTOR” MEANS, IN RELATION TO AN**
21 **INDIVIDUAL, ANY OF THE FOLLOWING HEALTH STATUS–RELATED FACTORS:**

- 22 1. **HEALTH STATUS;**
- 23 2. **MEDICAL CONDITION;**
- 24 3. **CLAIMS EXPERIENCE;**
- 25 4. **RECEIPT OF HEALTH CARE;**
- 26 5. **MEDICAL HISTORY;**

- 1 **6. GENETIC INFORMATION;**
2 **7. EVIDENCE OF INSURABILITY; OR**
3 **8. DISABILITY.**

4 **(v) "INCENTIVE" MEANS:**

- 5 **1. A DISCOUNT OR REBATE OF A PREMIUM OR**
6 **CONTRIBUTION;**
7 **2. A WAIVER OF ALL OR PART OF A COST-SHARING**
8 **MECHANISM, SUCH AS DEDUCTIBLES, COPAYMENTS, OR COINSURANCE;**
9 **3. THE ABSENCE OF A SURCHARGE; OR**
10 **4. THE VALUE OF A BENEFIT THAT WOULD**
11 **OTHERWISE NOT BE PROVIDED UNDER THE POLICY OR CONTRACT.**

12 (2) It is not discrimination or a rebate for a carrier to provide
13 reasonable incentives to an individual who is an insured, a subscriber, or a member for
14 participation in a bona fide wellness program offered by the carrier if:

15 (i) the carrier does not make participation in the bona fide
16 wellness program a condition of coverage under a policy or contract;

17 (ii) participation in the bona fide wellness program is voluntary
18 and a penalty is not imposed on an insured, subscriber, or member for
19 nonparticipation;

20 [(iii) an insured, subscriber, or member is not required to achieve
21 any specific outcome in order to receive an incentive for participation in the bona fide
22 wellness program; and]

23 [(iv)] **(III)** the carrier does not market the bona fide wellness
24 program in a manner that reasonably could be construed to have as its primary
25 purpose the provision of an incentive or inducement to purchase coverage from the
26 carrier; **AND**

27 **(IV) 1. THE BONA FIDE WELLNESS PROGRAM DOES NOT**
28 **CONDITION AN INCENTIVE ON AN INDIVIDUAL SATISFYING A STANDARD THAT IS**
29 **RELATED TO A HEALTH FACTOR; OR**

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

4 **B. THE USE OF THE HEALTH FACTOR IS NOT**
5 **OTHERWISE PROHIBITED BY LAW; AND**

6 **C. THE BONA FIDE WELLNESS PROGRAM MEETS THE**
7 **REQUIREMENTS OF PARAGRAPH (3) OF THIS SUBSECTION.**

8 [(3) Any incentive offered for participation in a bona fide wellness
9 program:

10 (i) shall be reasonably related to the bona fide wellness
11 program; and

12 (ii) may not have a value that exceeds any limit established in
13 regulations adopted by the Commissioner.]

14 **(3) AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION, A**
15 **BONA FIDE WELLNESS PROGRAM MAY CONDITION AN INCENTIVE ON AN**
16 **INDIVIDUAL SATISFYING A STANDARD THAT IS RELATED TO A HEALTH FACTOR**
17 **IF:**

18 **(I) 1. ANY INCENTIVE FOR PARTICIPATION IN THE BONA**
19 **FIDE WELLNESS PROGRAM, COUPLED WITH THE INCENTIVE FOR OTHER BONA**
20 **FIDE WELLNESS PROGRAMS WITH RESPECT TO THE POLICY OR CONTRACT THAT**
21 **REQUIRE SATISFACTION OF A STANDARD RELATED TO A HEALTH FACTOR, DOES**
22 **NOT EXCEED 20% OF THE COST OF EMPLOYEE-ONLY COVERAGE UNDER THE**
23 **PLAN; OR**

24 **2. WHEN THE PLAN PROVIDES COVERAGE FOR A**
25 **SPOUSE OR DEPENDENT CHILDREN, THE INCENTIVE FOR PARTICIPATION IN**
26 **THE BONA FIDE WELLNESS PROGRAM DOES NOT EXCEED 20% OF THE COST OF**
27 **THE COVERAGE IN WHICH THE EMPLOYEE AND THE SPOUSE OR DEPENDENT**
28 **CHILDREN ARE ENROLLED;**

29 **(II) THE BONA FIDE WELLNESS PROGRAM IS REASONABLY**
30 **DESIGNED TO PROMOTE HEALTH OR PREVENT DISEASE, AS PROVIDED UNDER**
31 **PARAGRAPH (4) OF THIS SUBSECTION;**

32 **(III) THE BONA FIDE WELLNESS PROGRAM GIVES**
33 **INDIVIDUALS ELIGIBLE FOR THE BONA FIDE WELLNESS PROGRAM THE**

1 OPPORTUNITY TO QUALIFY FOR THE INCENTIVE UNDER THE BONA FIDE
2 WELLNESS PROGRAM AT LEAST ONCE A YEAR;

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

6 (V) THE CARRIER DISCLOSES IN ALL POLICY OR CONTRACT
7 MATERIALS DESCRIBING THE TERMS OF THE BONA FIDE WELLNESS PROGRAM
8 THE AVAILABILITY OF A REASONABLE ALTERNATIVE STANDARD OR THE
9 POSSIBILITY OF A WAIVER OF THE OTHERWISE APPLICABLE STANDARD, AS
10 PROVIDED UNDER PARAGRAPHS (5) AND (6) OF THIS SUBSECTION.

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

14 (I) HAS A REASONABLE CHANCE OF IMPROVING THE
15 HEALTH OF OR PREVENTING DISEASE IN PARTICIPATING INDIVIDUALS; AND

16 (II) 1. IS NOT OVERLY BURDENSOME;

17 2. IS NOT A SUBTERFUGE FOR DISCRIMINATING
18 BASED ON A HEALTH FACTOR; AND

19 3. IS NOT HIGHLY SUSPECT IN THE METHOD CHOSEN
20 TO PROMOTE HEALTH OR PREVENT DISEASE.

21 (5) (I) AN INCENTIVE MAY NOT BE CONSTRUED TO BE
22 AVAILABLE TO ALL SIMILARLY SITUATED INDIVIDUALS FOR A PERIOD UNLESS
23 THE BONA FIDE WELLNESS PROGRAM ALLOWS A REASONABLE ALTERNATIVE
24 STANDARD, OR A WAIVER OF THE OTHERWISE APPLICABLE STANDARD, FOR
25 OBTAINING THE INCENTIVE FOR ANY INDIVIDUAL FOR WHOM, FOR THAT
26 PERIOD, IT IS:

27 1. UNREASONABLY DIFFICULT DUE TO A MEDICAL
28 CONDITION TO SATISFY THE OTHERWISE APPLICABLE STANDARD; OR

29 2. MEDICALLY INADVISABLE TO ATTEMPT TO
30 SATISFY THE OTHERWISE APPLICABLE STANDARD.

31 (II) A CARRIER MAY SEEK VERIFICATION, SUCH AS A
32 STATEMENT FROM AN INDIVIDUAL'S HEALTH CARE PROVIDER, THAT A HEALTH
33 FACTOR MAKES IT UNREASONABLY DIFFICULT OR MEDICALLY INADVISABLE

1 FOR THE INDIVIDUAL TO SATISFY OR ATTEMPT TO SATISFY THE OTHERWISE
2 APPLICABLE STANDARD.

3 (6) THE FOLLOWING LANGUAGE, OR SUBSTANTIALLY SIMILAR
4 LANGUAGE, MAY BE USED TO SATISFY THE REQUIREMENTS OF PARAGRAPH
5 (3)(V) OF THIS SUBSECTION:

6 “IF IT IS UNREASONABLY DIFFICULT DUE TO A MEDICAL CONDITION FOR
7 YOU TO ACHIEVE THE STANDARDS FOR THE INCENTIVE UNDER THIS PROGRAM,
8 OR IF IT IS MEDICALLY INADVISABLE FOR YOU TO ATTEMPT TO ACHIEVE THE
9 STANDARDS FOR THE INCENTIVE UNDER THIS PROGRAM, CALL US AT (INSERT
10 TELEPHONE NUMBER), AND WE WILL WORK WITH YOU TO DEVELOP ANOTHER
11 WAY TO QUALIFY FOR THE INCENTIVE.”

12 [(4)] (7) The Commissioner shall adopt regulations to implement the
13 provisions of this subsection.

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