

CHAPTER 683

(Senate Bill 638)

AN ACT concerning

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

FOR the purpose of ~~altering the conditions under which it is not discrimination or a rebate for~~ authorizing an insurer, a nonprofit health service plan, a health maintenance organization, or a dental plan organization to provide reasonable incentives for participation in a bona fide wellness program under certain circumstances; providing that it is not discrimination or a rebate for a carrier to provide reasonable incentives for participation in a bona fide wellness program if the bona fide wellness program satisfies certain requirements; 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; providing that a bona fide wellness program shall be construed in a certain manner if certain conditions are met; providing that an incentive may not be construed in a certain manner unless certain conditions are met; establishing requirements for certain alternative standards or waivers of certain standards; authorizing the use of certain language to satisfy certain requirements; 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; defining certain terms; altering certain definitions; and generally relating to ~~exceptions to prohibitions against discrimination or rebates for~~ incentives for participation in bona fide wellness programs offered with health insurance.

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

Annotated Code of Maryland

(2006 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, without amendments,
Article – Insurance
Section 15-10A-01(a), 15-1201(a) and 27-210(a)
Annotated Code of Maryland
(2006 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section 15-10A-01(b)(1), 15-1201(r), and 27-210(h)
Annotated Code of Maryland
(2006 Replacement Volume and 2008 Supplement)

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

Article – Health – General

19-706.

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

Article – Insurance

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;

(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.

27-210.

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

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

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

~~1. PROMOTE HEALTH OR prevent or detect disease or illness;~~

~~2. reduce or avoid poor clinical outcomes;~~

~~3. prevent complications from medical conditions; or~~

~~4. promote healthy behaviors and lifestyle choices.~~

~~(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.~~

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

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

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

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

~~(I) 1. ANY INCENTIVE FOR PARTICIPATION IN THE BONA FIDE WELLNESS PROGRAM, COUPLED WITH THE INCENTIVE FOR OTHER BONA~~

~~FIDE WELLNESS PROGRAMS WITH RESPECT TO THE POLICY OR CONTRACT THAT REQUIRE SATISFACTION OF A STANDARD RELATED TO A HEALTH FACTOR, DOES NOT EXCEED 20% OF THE COST OF EMPLOYEE ONLY COVERAGE UNDER THE PLAN; OR~~

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

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

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

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

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

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

~~(II) 1. IS NOT OVERLY BURDENSOME;~~

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

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

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

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

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

~~(H) 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.~~

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

~~"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."~~

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

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

Approved by the Governor, May 19, 2009.