SENATE BILL 334

C3 6lr0524

By: **Senators Kelley, Astle, Benson, Currie, Feldman, Guzzone, Hershey, Klausmeier, Madaleno, Middleton, Pugh, and Rosapepe**
Introduced and read first time: January 27, 2016
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Health Insurance – Access to Accurate Provider Directories**

3 FOR the purpose of prohibiting a carrier from issuing or delivering a health benefit plan in
4 the State before a provider directory for the health benefit plan is submitted to and
5 approved by the Maryland Insurance Commissioner; requiring a carrier to submit a
6 certain provider directory on a certain basis for review and reapproval by the
7 Commissioner; establishing certain requirements for a certain provider directory;
8 requiring a carrier to establish for each health benefit plan issued or delivered by
9 the carrier in the State a certain map that displays certain information; establishing
10 that a violation of this Act is an unfair trade practice in the business of insurance
11 under certain provisions of law; requiring the Commissioner to take certain
12 enforcement actions if the Commissioner finds that a carrier has violated this Act or
13 any regulation adopted under this Act; authorizing certain persons to bring a certain
14 action against a carrier in a certain court; requiring that certain persons who prevail
15 in a certain action be entitled to certain remedies and certain attorney's fees and
16 costs; requiring the Commissioner to adopt certain regulations; providing for the
17 application of this Act; defining certain terms; and generally relating to health
18 benefit plans and provider directories.

19 BY adding to
20 Article – Insurance
21 Section 15–2001 through 15–2006 to be under the new subtitle "Subtitle 20. Access
22 to Accurate Provider Directories"
23 Annotated Code of Maryland
24 (2011 Replacement Volume and 2015 Supplement)

25 Preamble

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

WHEREAS, A critical attribute of health care coverage is the network of contracted physicians and other health care providers, commonly referred to as the "provider network"; and

WHEREAS, The provider network is composed of physicians and other individual or institutional health care providers who have contracted to participate in a provider network by agreeing to abide by the network's rules and accept a specified discount off their retail charges; and

WHEREAS, Physicians and other health care providers generally offer substantial discounts to participate in provider networks because they may receive significant benefits in return, specifically a promise of prompt payment, increased patient volume by virtue of inclusion in provider directories and benefit plans that give patients a substantial financial incentive to go to in–network providers, and maintenance of patient loyalty by meeting their patients' requests that they be in–network; and

WHEREAS, Because consumers, for financial reasons, are most likely to obtain medical care from physicians and other health care providers who have contracted with a provider network to which the consumers have a right of access, a provider network that does not have an adequate number of contracted physicians and other health care providers in each specialty and geographic region deprives consumers of the benefit of the money they have paid for health care coverage; and

WHEREAS, Inadequate provider networks also undermine the public health and welfare by forcing consumers to reduce utilization of appropriate preventive services and forgo necessary medical care, which in turn leads to reduced productivity and increased absenteeism, unnecessary illness, and increased emergency department utilization; and

WHEREAS, To assess the appropriateness of a provider network before selecting a particular health insurance plan, consumers must have all the information relevant to their medical needs and the medical needs of their families, including whether their preferred physicians and preferred hospitals are in–network or out–of–network, whether the physicians and hospitals are accepting new patients, and what the likely waiting time is for an appointment; and

WHEREAS, It is particularly important for consumers seeking health insurance coverage through the Maryland Health Benefit Exchange to have this information as many of these consumers are purchasing coverage for the first time and need assurances that they will have access to a full range of physicians and other health care providers; and

WHEREAS, Consumers also continue to need access to a robust, up–to–date, provider directory to enable them to determine which physicians, other health care professionals, and health facilities remain in–network as their medical needs change; now, therefore,

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

1 **Article – Insurance**

2 **SUBTITLE 20. ACCESS TO ACCURATE PROVIDER DIRECTORIES.**

3 **15–2001.**

4 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
5 **INDICATED.**

6 **(B) "CARRIER" MEANS:**

7 **(1) AN INSURER AUTHORIZED TO SELL HEALTH INSURANCE;**

8 **(2) A NONPROFIT HEALTH SERVICE PLAN;**

9 **(3) A HEALTH MAINTENANCE ORGANIZATION; OR**

10 **(4) ANY OTHER ENTITY PROVIDING A PLAN OF HEALTH INSURANCE,**
11 **HEALTH BENEFITS, OR HEALTH SERVICES AUTHORIZED UNDER THIS ARTICLE OR**
12 **THE AFFORDABLE CARE ACT, EXCEPT FOR A MANAGED CARE ORGANIZATION AS**
13 **DEFINED IN TITLE 15, SUBTITLE 1 OF THE HEALTH – GENERAL ARTICLE.**

14 **(C) "HEALTH BENEFIT PLAN" HAS THE MEANING STATED IN § 15–1401 OF**
15 **THIS TITLE.**

16 **(D) (1) "HEALTH CARE FACILITY" MEANS A FIXED OR MOBILE FACILITY**
17 **AT WHICH DIAGNOSTIC OR TREATMENT SERVICES OR INPATIENT OR AMBULATORY**
18 **CARE ARE OFFERED TO TWO OR MORE UNRELATED INDIVIDUALS.**

19 **(2) "HEALTH CARE FACILITY" INCLUDES:**

20 **(I) A HOSPITAL AS DEFINED IN § 19–301 OF THE HEALTH –**
21 **GENERAL ARTICLE;**

22 **(II) A RELATED INSTITUTION AS DEFINED IN § 19–301 OF THE**
23 **HEALTH – GENERAL ARTICLE;**

24 **(III) A FREESTANDING MEDICAL FACILITY AS DEFINED IN §**
25 **19–3A–01 OF THE HEALTH – GENERAL ARTICLE;**

26 **(IV) A FREESTANDING AMBULATORY CARE FACILITY AS**
27 **DEFINED IN § 19–3B–01 OF THE HEALTH – GENERAL ARTICLE;**

1 (V) A HOME HEALTH AGENCY AS DEFINED IN § 19–401 OF THE
2 HEALTH – GENERAL ARTICLE;

3 (VI) A CHRONIC DISEASE FACILITY;

4 (VII) A PSYCHIATRIC FACILITY; AND

5 (VIII) AN AGENCY OR A CENTER THAT PROVIDES MENTAL HEALTH
6 SERVICES.

7 (E) "HEALTH CARE SERVICES" MEANS SERVICES FOR THE DIAGNOSIS,
8 PREVENTION, TREATMENT, OR CURE OF A HEALTH CONDITION, AN ILLNESS, AN
9 INJURY, OR ANY DISEASE.

10 (F) (1) "HOSPITAL–BASED PHYSICIAN" HAS THE MEANING STATED IN §
11 14–201 OF THIS ARTICLE.

12 (2) "HOSPITAL–BASED PHYSICIAN" INCLUDES ANESTHESIOLOGISTS,
13 RADIOLOGISTS, PATHOLOGISTS, EMERGENCY PHYSICIANS, HOSPITALISTS,
14 INTENSIVISTS, NEONATOLOGISTS, AND OTHER PHYSICIAN SPECIALISTS.

15 (G) "PROVIDER" MEANS:

16 (1) A PHYSICIAN OR A NONPHYSICIAN HEALTH CARE PROFESSIONAL
17 WHO IS:

18 (I) LICENSED OR CERTIFIED UNDER THE HEALTH
19 OCCUPATIONS ARTICLE; AND

20 (II) PRACTICING OR PERFORMING WITHIN THE SCOPE OF THAT
21 LICENSE OR CERTIFICATION; OR

22 (2) A HEALTH CARE FACILITY.

23 (H) "PROVIDER DIRECTORY" MEANS A LISTING OF EACH PARTICIPATING
24 PROVIDER WITHIN A PROVIDER NETWORK.

25 (I) "PROVIDER NETWORK" MEANS THE PROVIDERS WITH WHOM A CARRIER
26 HAS CONTRACTED TO PROVIDE HEALTH CARE SERVICES TO INSUREDS OR
27 ENROLLEES UNDER A HEALTH BENEFIT PLAN.

28 (J) (1) "PROVIDER TIERING" MEANS A SYSTEM THAT COMPARES, RATES,
29 RANKS, MEASURES, TIERS, OR CLASSIFIES A PROVIDER'S OR A PROVIDER GROUP'S

1 PERFORMANCE, QUALITY, OR COST OF CARE AGAINST OBJECTIVE STANDARDS,
2 SUBJECTIVE STANDARDS, OR THE PRACTICE OF OTHER PROVIDERS.

3 (2) "PROVIDER TIERING" INCLUDES QUALITY IMPROVEMENT
4 PROGRAMS, PAY–FOR–PERFORMANCE PROGRAMS, PUBLIC REPORTING ON
5 PROVIDER PERFORMANCE OR RATINGS, AND THE USE OF TIERED OR NARROWED
6 NETWORKS.

7 15–2002.

8 THIS SUBTITLE APPLIES TO A CARRIER THAT ISSUES OR DELIVERS A HEALTH
9 BENEFIT PLAN IN THE STATE.

10 15–2003.

11 (A) A CARRIER MAY NOT ISSUE OR DELIVER A HEALTH BENEFIT PLAN TO AN
12 INSURED OR ENROLLEE BEFORE A PROVIDER DIRECTORY FOR THE HEALTH
13 BENEFIT PLAN IS SUBMITTED TO AND APPROVED BY THE COMMISSIONER.

14 (B) A CARRIER SHALL SUBMIT ANNUALLY FOR REVIEW AND REAPPROVAL
15 BY THE COMMISSIONER A PROVIDER DIRECTORY FOR A HEALTH BENEFIT PLAN
16 THAT IS INITIALLY APPROVED BY THE COMMISSIONER UNDER SUBSECTION (A) OF
17 THIS SECTION.

18 15–2004.

19 (A) THE PROVIDER DIRECTORY REQUIRED UNDER § 15–2003 OF THIS
20 SUBTITLE SHALL:

21 (1) FOR EACH PARTICIPATING PHYSICIAN, INCLUDE:

22 (I) THE PHYSICIAN'S NAME, PRACTICE ADDRESS, INCLUDING
23 COUNTY, OFFICE TELEPHONE NUMBER, AND WEB SITE ADDRESS OR OTHER LINK TO
24 MORE DETAILED INDIVIDUAL PHYSICIAN INFORMATION, IF AVAILABLE;

25 (II) INFORMATION ABOUT THE PHYSICIAN'S SPECIALTY AND
26 SUBSPECIALTY;

27 (III) WHETHER THE PHYSICIAN MAY BE SELECTED AS A PRIMARY
28 CARE PHYSICIAN;

29 (IV) THE PHYSICIAN'S LICENSE NUMBER;

1 **(V) THE HOURS DURING WHICH THE PHYSICIAN IS AVAILABLE**
2 **TO TREAT PATIENTS;**

3 **(VI) THE NAMES AND LOCATIONS OF THE HOSPITALS AT WHICH**
4 **THE PHYSICIAN HAS MEDICAL STAFF PRIVILEGES AND WHETHER THOSE HOSPITALS**
5 **ARE PART OF THE PROVIDER NETWORK;**

6 **(VII) WHETHER THE PHYSICIAN IS ACCEPTING NEW PATIENTS;**

7 **(VIII) IF APPLICABLE TO THE HEALTH BENEFIT PLAN,**
8 **INFORMATION ABOUT THE METHOD USED TO COMPENSATE THE PHYSICIAN,**
9 **INCLUDING WHETHER THE PHYSICIAN IS REIMBURSED ON A FEE–FOR–SERVICE OR**
10 **CAPITATED BASIS; AND**

11 **(IX) IF THE PROVIDER NETWORK INCLUDES PHYSICIANS WHO**
12 **HAVE NOT CONTRACTED DIRECTLY WITH THE CARRIER BUT INSTEAD HAS**
13 **CONTRACTED THROUGH A CONTRACTING AGENT, THE NAME, WEB SITE ADDRESS,**
14 **MAILING ADDRESS, AND TELEPHONE NUMBER OF THE CONTRACTING AGENT;**

15 **(2) INCLUDE A NOTICE REGARDING THE AVAILABILITY OF**
16 **PHYSICIANS LISTED IN THE PROVIDER DIRECTORY THAT:**

17 **(I) IS PLACED IN A PROMINENT LOCATION IN THE PROVIDER**
18 **DIRECTORY; AND**

19 **(II) CONTAINS THE FOLLOWING STATEMENT: "THIS DIRECTORY**
20 **DOES NOT GUARANTEE SERVICES BY A PARTICULAR PROVIDER ON THIS LIST. IF YOU**
21 **WISH TO RECEIVE CARE FROM ANY OF THE SPECIFIC PROVIDERS LISTED, YOU**
22 **SHOULD CONTACT THOSE PROVIDERS TO BE SURE THAT THEY ARE ACCEPTING NEW**
23 **PATIENTS.";**

24 **(3) INCLUDE INFORMATION ABOUT HOW TO:**

25 **(I) SELECT A PRIMARY CARE PHYSICIAN;**

26 **(II) CHANGE A PRIMARY CARE PHYSICIAN; AND**

27 **(III) USE THE PRIMARY CARE PHYSICIAN FOR ACCESS TO OTHER**
28 **CARE;**

29 **(4) IF THE CARRIER USES PROVIDER TIERING IN A WAY THAT IMPACTS**
30 **FINANCIAL OR OTHER OBLIGATIONS OF AN INSURED OR ENROLLEE COVERED**
31 **UNDER THE HEALTH BENEFIT PLAN, PROVIDE CLEAR INFORMATION INDICATING:**

1 **(I) WHICH PHYSICIANS ARE PLACED IN WHICH TIER; AND**

2 **(II) HOW EACH TIER IMPACTS THE FINANCIAL OR OTHER**
3 **OBLIGATIONS OF THE INSURED OR ENROLLEE COVERED UNDER THE HEALTH**
4 **BENEFIT PLAN;**

5 **(5) IF THE PROVIDER DIRECTORY INCLUDES THE NAME OF ANY**
6 **PHYSICIAN TO WHICH THE INSURED OR ENROLLEE COVERED UNDER THE HEALTH**
7 **BENEFIT PLAN HAS NO RIGHT TO ACCESS ON AN IN–NETWORK BASIS, INCLUDE A**
8 **CONSPICUOUS DISCLAIMER STATING THAT: "THIS PHYSICIAN IS NOT AN**
9 **IN–NETWORK PHYSICIAN WITH RESPECT TO THIS HEALTH BENEFIT PLAN.";**

10 **(6) FOR EACH PARTICIPATING NONPHYSICIAN HEALTH CARE**
11 **PROFESSIONAL WHO BILLS INDEPENDENTLY FOR HEALTH CARE SERVICES:**

12 **(I) LIST THE TYPE OF LICENSE HELD BY THE NONPHYSICIAN**
13 **HEALTH CARE PROFESSIONAL; AND**

14 **(II) INCLUDE THE INFORMATION REQUIRED UNDER ITEMS (1)**
15 **THROUGH (5) OF THIS SUBSECTION TO THE EXTENT THAT THE INFORMATION IS**
16 **RELEVANT TO OR AVAILABLE FOR THE NONPHYSICIAN HEALTH CARE**
17 **PROFESSIONAL;**

18 **(7) FOR EACH PARTICIPATING HEALTH CARE FACILITY:**

19 **(I) INCLUDE CONTACT INFORMATION, INCLUDING THE HEALTH**
20 **CARE FACILITY'S NAME, TYPE, ADDRESS, TELEPHONE NUMBER, AND WEB SITE**
21 **ADDRESS, IF AVAILABLE;**

22 **(II) INCLUDE INFORMATION ABOUT THE AVAILABILITY OF**
23 **EMERGENCY DEPARTMENT SERVICES AT THE HEALTH CARE FACILITY; AND**

24 **(III) IF THE CARRIER USES PROVIDER TIERING IN A WAY THAT**
25 **IMPACTS FINANCIAL OR OTHER OBLIGATIONS OF AN INSURED OR ENROLLEE**
26 **COVERED UNDER THE HEALTH BENEFIT PLAN, PROVIDE CLEAR INFORMATION**
27 **INDICATING:**

28 **1. WHICH HEALTH CARE FACILITIES ARE PLACED IN**
29 **WHICH TIER; AND**

1 2. HOW EACH TIER IMPACTS THE FINANCIAL OR OTHER
2 OBLIGATIONS OF THE INSURED OR ENROLLEE COVERED UNDER THE HEALTH
3 BENEFIT PLAN;

4 (8) IF THE PROVIDER DIRECTORY INCLUDES THE NAME OF ANY
5 HEALTH CARE FACILITY TO WHICH THE INSURED OR ENROLLEE COVERED UNDER
6 THE HEALTH BENEFIT PLAN HAS NO RIGHT TO ACCESS ON AN IN–NETWORK BASIS,
7 PROVIDE A CONSPICUOUS DISCLAIMER STATING THAT: "THIS HEALTH CARE
8 FACILITY IS NOT AN IN–NETWORK HEALTH CARE FACILITY WITH RESPECT TO THIS
9 HEALTH BENEFIT PLAN."; AND

10 (9) INCLUDE RELEVANT CONTACT INFORMATION AND ONLINE LINKS
11 TO THE FOLLOWING ENTITIES PARTICIPATING IN THE PROVIDER NETWORK, IF
12 AVAILABLE:

13 (I) PHARMACIES AND PHARMACY BENEFIT MANAGERS;

14 (II) DURABLE MEDICAL EQUIPMENT PROVIDERS;

15 (III) CLINICAL LABORATORIES; AND

16 (IV) ANCILLARY SERVICE PROVIDERS.

17 (B) (1) A CARRIER SHALL ESTABLISH FOR EACH HEALTH BENEFIT PLAN
18 ISSUED OR DELIVERED BY THE CARRIER AN ONLINE GRAPHIC INTERACTIVE MAP
19 THAT PROVIDES BOTH CURRENT AND PROSPECTIVE INSUREDS AND ENROLLEES THE
20 MEANS TO INPUT A REFERENCE ADDRESS AND LOCATE PROVIDERS LISTED IN THE
21 PROVIDER DIRECTORY BY NAME, TYPE, SPECIALTY, SUBSPECIALTY, AND DISTANCE.

22 (2) THE MAP REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION
23 SHALL DISPLAY FOR EACH PROVIDER IDENTIFIED BY EACH SEARCH:

24 (I) WHETHER THE PROVIDER IS PARTICIPATING IN THE
25 PROVIDER NETWORK;

26 (II) WHETHER THE PROVIDER IS ACCEPTING NEW PATIENTS;

27 (III) IF THE PROVIDER NETWORK USES PROVIDER TIERING:

28 1. THE TIER TO WHICH THE PROVIDER IS ASSIGNED; AND

1 **2. HOW THE TIER ASSIGNMENT IMPACTS THE FINANCIAL**
2 **OR OTHER OBLIGATIONS OF THE INSURED OR ENROLLEE COVERED UNDER THE**
3 **HEALTH BENEFIT PLAN;**

4 **(IV) THE DISTANCE FROM THE INPUT LOCATION TO THE**
5 **PROVIDER;**

6 **(V) THE PROVIDER TYPE, SPECIALTY, AND SUBSPECIALTY;**

7 **(VI) CONTACT INFORMATION FOR THE PROVIDER; AND**

8 **(VII) FOR HOSPITAL–BASED PHYSICIANS:**

9 **1. THE PHYSICIAN SPECIALTY;**

10 **2. THE NAMES AND LOCATIONS OF THE HOSPITALS AT**
11 **WHICH THE PHYSICIAN IS CONTRACTED TO PROVIDE HEALTH CARE SERVICES; AND**

12 **3. WHETHER EACH HOSPITAL AT WHICH THE PHYSICIAN**
13 **IS CONTRACTED TO PROVIDE HEALTH CARE SERVICES IS PARTICIPATING IN THE**
14 **PROVIDER NETWORK.**

15 **(C) THE PROVIDER DIRECTORY REQUIRED UNDER § 15–2003 OF THIS**
16 **SUBTITLE SHALL BE:**

17 **(1) PROVIDED TO THE INSURED OR ENROLLEE AT THE TIME OF**
18 **ENROLLMENT IN A DOWNLOADABLE OR HARD COPY FORMAT, DEPENDING ON THE**
19 **METHOD BY WHICH THE INSURED OR ENROLLEE ENROLLED IN THE HEALTH**
20 **BENEFIT PLAN;**

21 **(2) POSTED ON THE CARRIER'S WEB SITE; AND**

22 **(3) KEPT CURRENT AND ACCURATE, INCLUDING AT A MINIMUM:**

23 **(I) MAINTENANCE OF A MECHANISM THAT ENABLES**
24 **PROVIDERS TO EASILY UPDATE THEIR OWN INFORMATION IN THE PROVIDER**
25 **DIRECTORY;**

26 **(II) USE OF AN ONGOING PROVIDER SURVEY MECHANISM TO**
27 **CONFIRM THE CONTINUED ACCURACY OF THE PROVIDER DIRECTORY;**

28 **(III) USE OF A MECHANISM THAT ENABLES INSUREDS AND**
29 **ENROLLEES TO EASILY REPORT ERRORS IN THE PROVIDER DIRECTORY; AND**

1 **(IV) UPDATES OF THE ONLINE PROVIDER DIRECTORY AT LEAST**
2 **EVERY 30 DAYS.**

3 **15–2005.**

4 **(A) A VIOLATION OF THIS SUBTITLE IS AN UNFAIR TRADE PRACTICE IN THE**
5 **BUSINESS OF INSURANCE UNDER TITLE 27 OF THIS ARTICLE.**

6 **(B) IF THE COMMISSIONER FINDS THAT A CARRIER HAS VIOLATED THIS**
7 **SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS SUBTITLE, THE**
8 **COMMISSIONER SHALL:**

9 **(1) TAKE ANY ENFORCEMENT ACTION AUTHORIZED UNDER THIS**
10 **ARTICLE THAT IS NECESSARY TO OBTAIN COMPLIANCE WITH THIS SUBTITLE,**
11 **INCLUDING IMPOSITION OF ANY PENALTY PROVIDED UNDER THIS ARTICLE; AND**

12 **(2) IF THE VIOLATION RESULTS IN AN INSURED'S OR ENROLLEE'S USE**
13 **OF AN OUT–OF–NETWORK PROVIDER DESPITE REASONABLE EFFORTS BY THE**
14 **INSURED OR ENROLLEE TO REMAIN IN–NETWORK, REQUIRE THE CARRIER TO:**

15 **(I) PAY THE OUT–OF–NETWORK PROVIDER'S USUAL,**
16 **CUSTOMARY, AND REASONABLE CHARGE AS STATED ON THE CLAIM FORM;**

17 **(II) ENSURE THAT THE INSURED'S OR ENROLLEE'S FINANCIAL**
18 **OBLIGATIONS ARE NO GREATER THAN IF THE SERVICE HAD BEEN PROVIDED BY AN**
19 **IN–NETWORK PROVIDER; AND**

20 **(III) APPLY THE INSURED'S OR ENROLLEE'S OUT–OF–POCKET**
21 **EXPENSES TO ANY OUT–OF–POCKET MAXIMUM UNDER THE INSURED'S OR**
22 **ENROLLEE'S HEALTH BENEFIT PLAN.**

23 **(C) (1) AN INSURED, AN ENROLLEE, OR A PROVIDER MAY BRING AN**
24 **ACTION IN A COURT OF COMPETENT JURISDICTION AGAINST A CARRIER FOR A**
25 **VIOLATION OF THIS SUBTITLE.**

26 **(2) AN INSURED, AN ENROLLEE, OR A PROVIDER WHO PREVAILS IN AN**
27 **ACTION BROUGHT UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE**
28 **ENTITLED TO:**

29 **(I) WHATEVER REMEDIES ARE PROVIDED UNDER THIS**
30 **SUBTITLE OR OTHERWISE PROVIDED BY LAW; AND**

1 **(II) REASONABLE ATTORNEY'S FEES AND COSTS.**

2 **15–2006.**

3 **THE COMMISSIONER SHALL ADOPT REGULATIONS TO IMPLEMENT THIS**
4 **SUBTITLE.**

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2016.