

Chapter 38

(Senate Bill 725)

AN ACT concerning

Insurance – Product and Service Offerings

FOR the purpose of authorizing certain insurers, nonprofit health service plans, and health maintenance organizations to offer and provide certain products or services in conjunction with a policy at no charge or at a discounted price under certain circumstances; prohibiting certain insurers, nonprofit health service plans, and health maintenance organizations from increasing a premium or denying a claim based on a certain action by a policyholder; and generally relating to programs and services offered by insurers, nonprofit health service plans, and health maintenance organizations.

BY repealing and reenacting, with amendments,

Article – Insurance

Section 27–209 and 27–212

Annotated Code of Maryland

(2017 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, without amendments,

Article – Insurance

Section 27–210 and 27–211

Annotated Code of Maryland

(2017 Replacement Volume and 2022 Supplement)

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

Article – Insurance

27–209.

(a) Except as otherwise expressly provided by law, a person, including a health maintenance organization, may not knowingly:

(1) allow, make, or offer to make a contract of life insurance or health insurance or an annuity contract or an agreement as to the contract other than as plainly expressed in the contract;

(2) pay, allow, give, or offer to pay, allow, or give directly or indirectly as an inducement to the insurance or annuity:

(i) a rebate of premiums payable on the contract;

(ii) a special favor or advantage in the dividends or other benefits under the contract;

(iii) paid employment or a contract for services of any kind; or

(iv) any valuable consideration or other inducement not specified in the contract;

(3) directly or indirectly give, sell, purchase, offer or agree to give, sell, or purchase, or allow as inducement to the insurance or annuity or in connection with the insurance or annuity, regardless of whether specified in the policy or contract, an agreement that promises returns and profits, or stocks, bonds, or other securities, or a present or contingent interest in or measured by stocks, bonds, or other securities, of an insurer or other corporation, association, or partnership, or dividends or profits accrued or to accrue on stocks, bonds, or other securities; or

(4) offer, promise, or give any valuable consideration not specified in the contract, except for educational materials, promotional materials, or articles of merchandise that cost no more than \$50.

(b) A person may not make receipt of any educational materials, promotional materials, or articles of merchandise under subsection (a)(4) of this section contingent on the sale or purchase of insurance.

(c) (1) THIS SECTION DOES NOT PROHIBIT AN INSURER, A NONPROFIT HEALTH SERVICE PLAN, OR A HEALTH MAINTENANCE ORGANIZATION FROM OFFERING OR PROVIDING PRODUCTS OR SERVICES IN CONJUNCTION WITH A POLICY AT NO CHARGE OR AT A DISCOUNTED PRICE IF:

(i) 1. A. THE PRODUCTS OR SERVICES ARE OFFERED OR PROVIDED TO EDUCATE PERSONS REGARDING, OR TO ASSESS, MONITOR, CONTROL, OR PREVENT, RISK OF LOSS TO PERSONS; AND

B. THE RISK OF LOSS TO PERSONS IS ASSOCIATED WITH RISKS INSURED AGAINST BY THE POLICY OR INSURANCE OR ANNUITY CONTRACT; OR

2. THE PRODUCTS OR SERVICES ARE:

A. SUBSTANTIALLY RELATED TO THE INSURANCE PROVIDED UNDER THE POLICY OR CONTRACT; OR

B. OFFERED OR PROVIDED TO ENHANCE THE HEALTH OF THE INSURED OR BENEFICIARY; AND

(II) THE OFFER OR PROVISION OF PRODUCTS OR SERVICES IS AVAILABLE TO ALL POLICYHOLDERS THAT HAVE PURCHASED THE POLICY OR CONTRACT ASSOCIATED WITH THE OFFER OR PROVISION.

(2) AN INSURER, A NONPROFIT HEALTH SERVICE PLAN, OR A HEALTH MAINTENANCE ORGANIZATION MAY INCLUDE AN OFFER OR A PROVISION OF PRODUCTS OR SERVICES UNDER THIS SUBSECTION IN AN APPLICABLE CONTRACT OR FORM OR RATE FILING.

(3) (I) IF THE OFFER OR PROVISION OF SPECIFIC PRODUCTS OR SERVICES UNDER THIS SUBSECTION IS INCLUDED IN ANY POLICY OF INSURANCE, HEALTH MAINTENANCE ORGANIZATION CONTRACT, NONPROFIT HEALTH SERVICE PLAN, OR ANNUITY CONTRACT, THE PRODUCTS OR SERVICES MAY NOT BE DISCONTINUED DURING THE TERM OF THE POLICY OR CONTRACT UNLESS DISCONTINUATION OF THE PRODUCT OR SERVICES IS:

1. CONSENTED TO IN WRITING BY THE POLICYHOLDER;

OR

2. THE RESULT OF A UNIFORM MODIFICATION UNDER § 15-1212, § 15-1309, OR § 15-1409 OF THIS ARTICLE.

(II) THIS PARAGRAPH DOES NOT PROHIBIT A CARRIER FROM TERMINATING A CONTRACT AS OTHERWISE AUTHORIZED UNDER THIS ARTICLE.

(4) AN INSURER, A NONPROFIT HEALTH SERVICE PLAN, OR A HEALTH MAINTENANCE ORGANIZATION MAY NOT INCREASE THE PREMIUM OR DENY A CLAIM OF A POLICYHOLDER IF THE POLICYHOLDER ACCEPTS, REJECTS, USES, OR FAILS TO USE A PRODUCT OR SERVICE UNDER THIS SUBSECTION.

(5) ~~THE (I)~~ SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COMMISSIONER MAY DETERMINE BY REGULATION THE TYPES OF PRODUCTS OR SERVICES THAT MEET THE CRITERIA IN PARAGRAPH (1) OF THIS SUBSECTION.

(II) A PRODUCT OR SERVICE OFFERED OR PROVIDED IN CONJUNCTION WITH AN INSURANCE POLICY OR ANNUITY CONTRACT THAT IS PRIMARILY DESIGNED TO ENHANCE FINANCIAL WELLNESS SHALL BE ALLOWED IF THE COMMISSIONER DETERMINES THAT THE PRODUCT OR SERVICE INCLUDES AN ENHANCEMENT TO THE FINANCIAL PROTECTION COMPONENT OF THE INSURANCE POLICY OR ANNUITY CONTRACT.

(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.

(b) For a contract of life insurance or an annuity contract, it is not discrimination or a rebate to pay bonuses to policyholders or otherwise abate their premiums wholly or partly out of the surplus accumulated from nonparticipating insurance, if the bonuses or abatement of premiums is fair, equitable to, and in the best interest of policyholders.

(c) For policies of life insurance or health insurance issued on the industrial debit, preauthorized check, bank draft, or similar plans, it is not discrimination or a rebate to make an allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer or by preauthorized check, bank draft, or similar plans in an amount that fairly represents the savings in collection expense.

(d) It is not discrimination or a rebate to readjust the rate of premium for a group policy based on the loss or expense experience under the policy, at the end of any policy year, retroactive only for that policy year.

(e) It is not discrimination or a rebate to reduce the premium rate for policies of large amount, if the reduction does not exceed savings in issuance and administrative expenses reasonably attributable to policies of large amount as compared with policies of similar plan issued in smaller amounts.

(f) It is not discrimination or a rebate to issue policies of life insurance or health insurance or annuity contracts on a salary savings or payroll deduction plan or other distribution plan at a reduced rate reasonably commensurate with the savings made by use of the plan.

(g) It is not discrimination or a rebate to issue policies of health insurance that provide for increases in benefits to policyholders who maintain their policies continuously in force without lapse for specified periods.

(h) (1) In this subsection, “wellness program” means a program that:

(i) meets the requirements of a participatory wellness program or a health–contingent wellness program under § 15–509 of this article; and

(ii) is provided as a benefit outside of the health insurance or health maintenance organization contract.

(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 wellness program offered by the carrier.

(3) Any incentive offered for participation in a wellness program:

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

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

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

27-211.

(a) This section does not apply to:

(1) insurance on the life of a debtor in connection with a specific loan or other credit transaction;

(2) insurance on a debtor that provides indemnity for payments that are due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy; or

(3) life insurance or an annuity used to fund a pre-need contract as defined in § 7-101 of the Health Occupations Article or a preneed burial contract as defined in § 5-701 of the Business Regulation Article.

(b) An insurer may not directly or indirectly, or by an insurance producer or representative of the insurer, participate in a plan to offer or effect a kind or kinds of life insurance, health insurance, or annuities in the State as an inducement to, or in combination with, the purchase by the public of goods, securities, commodities, services or subscriptions to periodicals.

27-212.

(a) This section does not apply to life insurance, health insurance, and annuities.

(b) Except to the extent provided for in an applicable filing with the Commissioner as provided by law, an insurer, employee or representative of an insurer or insurance producer may not pay, allow, give, or offer to pay, allow, or give directly or indirectly as an inducement to insurance or after insurance has become effective:

(1) a rebate, discount, abatement, credit, or reduction of the premium stated in the policy;

(2) a special favor or advantage in the dividends or other benefits to accrue on the policy; or

(3) any valuable consideration or other inducement not specified in the policy.

(c) An insured named in a policy or an employee of the insured may not knowingly receive or accept directly or indirectly a rebate, discount, abatement, credit, reduction of premium, special favor, advantage, valuable consideration, or inducement described in subsection (b) of this section.

(d) (1) Except as otherwise provided by law, a person may not knowingly offer, promise, or give any valuable consideration not specified in the policy, except for educational materials, promotional materials, or articles of merchandise that cost no more than \$50.

(2) A person may not make receipt of any educational materials, promotional materials, or articles of merchandise under this subsection contingent on the sale or purchase of insurance.

(e) (1) An insurer may not make or allow unfair discrimination between insureds or properties having like insuring or risk characteristics in:

- (i) the premium or rates charged for insurance;
- (ii) the dividends or other benefits payable on the insurance; or
- (iii) any of the other terms or conditions of the insurance.

(2) Notwithstanding any other provision of this section, an insurer may not make or allow a differential in ratings, premium payments, or dividends for a reason based on the sex, physical handicap, or disability of an applicant or policyholder unless there is actuarial justification for the differential.

(f) (1) This section does not prohibit an insurer from:

[(1)] (I) paying commissions or other compensation to licensed insurance producers;

[(2)] (II) paying commissions to licensed insurance producers on a variable basis on policies issued to qualified exempt commercial policyholders, as defined in § 11–206 of this article, if:

[(i)] 1. the payment of the commission to the insurance producer on a variable basis results in a lower total cost of the policy to the qualified exempt commercial policyholder; and

[(ii)] 2. the insurance producer receiving the commission has agreed to the specific level of commission to be paid on the policy; [or]

[(3)] (III) allowing or returning to its participating policyholders, members, or subscribers lawful dividends, savings, or unabsorbed premium deposits[.]; OR

(IV) OFFERING OR PROVIDING PRODUCTS OR SERVICES IN CONJUNCTION WITH A POLICY AT NO CHARGE OR AT A DISCOUNTED PRICE TO EDUCATE A PERSON REGARDING, OR TO ASSESS, MONITOR, CONTROL, OR PREVENT, RISK OF LOSS TO PERSONS OR PROPERTY IF:

1. THE RISK OF LOSS TO PERSONS OR PROPERTY IS ASSOCIATED WITH THE RISKS INSURED AGAINST BY THE POLICY; AND

2. THE OFFER OR PROVISION OF PRODUCTS OR SERVICES IS AVAILABLE TO ALL POLICYHOLDERS THAT HAVE PURCHASED THE POLICY ASSOCIATED WITH THE OFFER OR PROVISION.

(2) AN INSURER MAY INCLUDE IN AN APPLICABLE CONTRACT OR FORM OR RATE FILING AN OFFER OR A PROVISION OF PRODUCTS OR SERVICES UNDER THIS SUBSECTION.

(3) AN INSURER MAY NOT INCREASE THE PREMIUM OR DENY A CLAIM OF A POLICYHOLDER IF THE POLICYHOLDER ACCEPTS, REJECTS, USES, OR FAILS TO USE A PRODUCT OR SERVICE UNDER THIS SUBSECTION.

(4) THE COMMISSIONER MAY DETERMINE BY REGULATION THE TYPES OF PRODUCTS OR SERVICES THAT MEET THE CRITERIA IN PARAGRAPH (1)(IV) OF THIS SUBSECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any policies, contracts, and health benefit plans issued, delivered, or renewed in the State before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2023.

Approved by the Governor, April 11, 2023.