

1 SB579
2 135631-1
3 By Senator Reed
4 RFD: Health
5 First Read: 01-MAY-12

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8 SYNOPSIS: This bill would require a health benefit
9 plan that uses drug formularies to specify the
10 prescription drugs that are covered under the plan
11 to provide information to cover individuals
12 regarding which drugs are covered under the plan
13 and what methodology is used to determine if a drug
14 is covered. This bill would require a health
15 benefit plan to offer a prescription drug to a
16 covered individual at the same benefit level as was
17 originally contracted even if the prescription drug
18 is later removed from the formulary.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT

23
24 Relating to health benefit plans; to require a
25 health benefit plan that uses formularies to specify the
26 prescription drugs that are covered under the plan to provide
27 certain information to covered individuals regarding coverage

1 and methodology to require a health benefit plan to cover a
2 prescription drug at the benefit level originally contracted;
3 and to amend Sections 10A-20-6.16 and 27-21A-23, Code of
4 Alabama 1975, relating to health insurance coverage.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. (a) For purposes of this act, the term
7 health benefit plan means an individual or group insurance
8 plan or policy that covers hospital, medical, or surgical
9 expenses, health maintenance organizations, preferred provider
10 organizations, medical service organizations,
11 physician-hospital organizations, or any other person, firm,
12 corporation, joint venture, or other similar business entity
13 that pays for, purchases, or furnishes health care services to
14 patients, insureds, or beneficiaries in this state. For the
15 purposes of this act, a health benefit plan located or
16 domiciled outside of the State of Alabama is deemed to be
17 subject to this act if it receives, processes, adjudicates,
18 pays, or denies claims for health care services submitted by
19 or on behalf of patients, insureds, or beneficiaries who
20 reside in the State of Alabama or who receive health care
21 services in the State of Alabama. The term includes, but is
22 not limited to, entities created pursuant to Article 6,
23 Chapter 20, Title 10A, Code of Alabama 1975.

24 (b) The term health benefit plan does not include
25 any of the following:

26 (1) A health benefit plan that provides coverage
27 only for one of the following:

- 1 a. For a specified disease or for another single
- 2 benefit.
- 3 b. For accidental death or dismemberment.
- 4 c. For wages or payments in lieu of wages for a
- 5 period during which an employee is absent from work because of
- 6 sickness or injury.
- 7 d. As a supplement to a liability insurance policy.
- 8 e. For credit insurance.
- 9 f. For dental or vision care.
- 10 g. For hospital expenses.
- 11 h. For indemnity for hospital confinement.

12 (2) A medicare supplemental policy as defined by
13 Section 1882(g)(1), Social Security Act, 42 U.S.C. §1395ss, as
14 amended.

15 (3) A workers' compensation insurance policy.

16 (4) A medical payment insurance coverage provided
17 under a motor vehicle insurance policy.

18 (5) A long-term care insurance policy, including a
19 nursing home fixed indemnity policy, unless the commissioner
20 determines that the policy provides benefit coverage so
21 comprehensive that the policy is a health benefit plan as
22 defined in subsection (a).

23 Section 2. (a) A health benefit plan that covers
24 prescription drugs and uses one or more drug formularies to
25 specify the prescription drugs covered under the plan shall do
26 all of the following:

1 (1) Provide in plain language in the coverage
2 documentation provided to each enrollee all of the following:

3 a. Notice that the plan uses one or more drug
4 formularies.

5 b. An explanation of what a drug formulary is.

6 c. A statement regarding the method the issuer uses
7 to determine the prescription drugs to be included in or
8 excluded from a drug formulary.

9 d. A statement of how often the issuer reviews the
10 contents of each drug formulary.

11 e. Notice that a covered individual may contact the
12 issuer to determine whether a specific drug is included in a
13 particular drug formulary.

14 (2) Disclose to an individual on request, not later
15 than the third business day after the date of the request,
16 whether a specific drug is included in a particular drug
17 formulary.

18 (3) Notify a covered individual and any other
19 individual who requests information under this section that
20 the inclusion of a drug in a drug formulary does not guarantee
21 that an enrollee's health care provider will prescribe that
22 drug for a particular medical condition or mental illness.

23 Section 3. (a) A health benefit plan that covers
24 prescription drugs shall offer to each covered individual at
25 the contracted benefit level and until the covered
26 individual's plan renewal date any prescription drug that was
27 approved or covered under the plan for a medical condition or

1 mental illness, regardless of whether the drug has been
2 removed from the health benefit plan's drug formulary before
3 the plan renewal date.

4 (b) This section does not prohibit a physician or
5 other health professional who is authorized to prescribe a drug
6 from prescribing a drug that is an alternative to a drug for
7 which continuation of coverage is required under subsection
8 (a) if the alternative drug meets both of the following
9 requirements:

10 (1) Is covered under the health benefit plan.

11 (2) Is medically appropriate for the covered
12 individual.

13 Section 4. (a) The refusal of a health benefit plan
14 to provide benefits to an enrollee for a prescription drug is
15 an adverse determination if both of the following conditions
16 exist:

17 (1) The drug is not included in a drug formulary
18 used by the health benefit plan.

19 (2) The covered individual's physician has
20 determined that the drug is medically necessary.

21 Section 5. Sections 10A-20-6.16 and 27-21A-23, Code
22 of Alabama 1975, are amended to read as follows:

23 "§10A-20-6.16.

24 "(a) No statute of this state applying to insurance
25 companies shall be applicable to any corporation organized
26 under this article and amendments thereto or to any contract

1 made by the corporation unless expressly mentioned in this
2 article and made applicable; except as follows:

3 "(1) The corporation shall be subject to the
4 provisions regarding annual premium tax to be paid by insurers
5 on insurance premiums.

6 "(2) The corporation shall be subject to the
7 provisions of Chapter 55, Title 27, regarding the prohibition
8 of unfair discriminatory acts by insurers on the basis of an
9 applicant's or insured's abuse status.

10 "(3) The corporation shall be subject to the
11 provisions regarding Medicare Supplement Minimum Standards set
12 forth in Article 2 of Chapter 19 of Title 27, and Long-Term
13 Care Insurance Policy Minimum Standards set forth in Article 3
14 of Chapter 19 of Title 27.

15 "(4) The corporation shall be subject to Section
16 27-1-17, requiring insurers and health plans to pay health
17 care providers in a timely manner.

18 "(5) The corporation shall be subject to the
19 provisions of Chapter 56 of Title 27, regarding the Access to
20 Eye Care Act.

21 "(6) The corporation shall be subject to the
22 regulations promulgated by the Commissioner of Insurance
23 pursuant to Sections 27-7-43 and 27-7-44.

24 "(7) The corporation shall be subject to the
25 provisions of Chapter 54 of Title 27.

26 "(8) The corporation shall be subject to the
27 provisions of Chapter 57 of Title 27, requiring coverage to be

1 offered for the payment of colorectal cancer examinations for
2 covered persons who are 50 years of age or older, or for
3 covered persons who are less than 50 years of age and at high
4 risk for colorectal cancer according to current American
5 Cancer Society colorectal cancer screening guidelines.

6 "(9) The corporation shall be subject to Chapter 58
7 of Title 27, requiring that policies and contracts including
8 coverage for prostate cancer early detection be offered,
9 together with identification of associated costs.

10 "(10) The corporation shall be subject to Chapter 59
11 of Title 27 requiring that policies and contracts including
12 coverage for chiropractic be offered, together with
13 identification of associated costs.

14 "(11) The corporation shall be subject to Sections 1
15 to 4, inclusive, of the act adding this subdivision relating
16 to health benefit plans that specify coverage of prescription
17 drugs based on formularies.

18 "(b) The provisions in subsection (a) that require
19 specific types of coverage to be offered or provided shall not
20 apply when the corporation is administering a self-funded
21 benefit plan or similar plan, fund, or program that it does
22 not insure.

23 "§27-21A-23.

24 "(a) Except as otherwise provided in this chapter,
25 provisions of the insurance law and provisions of health care
26 service plan laws shall not be applicable to any health
27 maintenance organization granted a certificate of authority

1 under this chapter. This provision shall not apply to an
2 insurer or health care service plan licensed and regulated
3 pursuant to the insurance law or the health care service plan
4 laws of this state except with respect to its health
5 maintenance organization activities authorized and regulated
6 pursuant to this chapter.

7 "(b) Solicitation of enrollees by a health
8 maintenance organization granted a certificate of authority
9 shall not be construed to violate any provision of law
10 relating to solicitation or advertising by health
11 professionals.

12 "(c) Any health maintenance organization authorized
13 under this chapter shall not be deemed to be practicing
14 medicine and shall be exempt from the provisions of Section
15 34-24-310, et seq., relating to the practice of medicine.

16 "(d) No person participating in the arrangements of
17 a health maintenance organization other than the actual
18 provider of health care services or supplies directly to
19 enrollees and their families shall be liable for negligence,
20 misfeasance, nonfeasance, or malpractice in connection with
21 the furnishing of such services and supplies.

22 "(e) Nothing in this chapter shall be construed in
23 any way to repeal or conflict with any provision of the
24 certificate of need law.

25 "(f) Notwithstanding the provisions of subsection
26 (a), a health maintenance organization shall be subject to
27 Section 27-1-17.

1 "(g) Notwithstanding the provisions of subsection
2 (a), a health maintenance organization shall be subject to the
3 provisions of Chapter 56 of this title, regarding the Access
4 to Eye Care Act.

5 "(h) Notwithstanding the provisions of subsection
6 (a), a health maintenance organization shall be subject to the
7 provisions of Chapter 54 of this title.

8 "(i) Notwithstanding the provisions of subsection
9 (a), a health maintenance organization shall be subject to the
10 provisions of Chapter 57 of this title, requiring coverage to
11 be offered for the payment of colorectal cancer examinations
12 for covered persons who are 50 years of age or older, or for
13 covered persons who are less than 50 years of age and at high
14 risk for colorectal cancer according to current American
15 Cancer Society colorectal cancer screening guidelines.

16 "(j) Notwithstanding the provisions of subsection
17 (a), a health maintenance organization shall be subject to
18 Chapter 58 of Title 27, requiring that policies and contracts
19 including coverage for prostate cancer early detection be
20 offered, together with identification of associated costs.

21 "(k) Notwithstanding the provisions of subsection
22 (a), a health maintenance organization shall be subject to
23 Chapter 59 of this title, requiring that policies and
24 contracts including coverage for chiropractic be offered,
25 together with identification of associated costs.

26 "(l) Notwithstanding the provisions of subsection
27 (a), a health maintenance organization shall be subject to

1 Sections 1 to 4, inclusive, of the act adding this subsection
2 related to health benefit plans that specify coverage of
3 prescription drugs based on formularies."

4 Section 6. This act applies only to a health benefit
5 plan delivered, issued for delivery, or renewed on or after
6 January 1, 2013. A health benefit plan delivered, issued for
7 delivery, or renewed before January 1, 2013, is governed by
8 the law in effect immediately before the effective date of
9 this act, and that law is continued in effect for that
10 purpose.

11 Section 7. This act takes effect September 1, 2012.