

Department of Legislative Services

Maryland General Assembly

2010 Session

FISCAL AND POLICY NOTE

House Bill 1101

(Delegate Elliott)

Economic Matters

Insurance - Unfair Claim Settlement Practices - Third-Party Claims

This bill expands the scope of unfair claim settlement practices by an insurer or nonprofit health service plan to include failing to act in good faith with respect to settling a third-party property and casualty insurance claim. The bill also expands the circumstances under which an unfair claim settlement practice, with the frequency to indicate a general business practice, is considered to have been lacking good faith. The bill's provisions relating to administrative penalties and license sanctions that may be imposed by the Insurance Commissioner apply prospectively to an act or omission occurring on or after October 1, 2010.

Fiscal Summary

State Effect: The bill's requirements can be handled with the existing budgeted resources of the Maryland Insurance Administration (MIA). Potential minimal increase in special fund revenues from administrative penalties. Potential minimal increase in general fund revenues due to the bill's criminal penalty provision. No effect on general fund expenditures.

Local Effect: Potential minimal increase in revenues due to the bill's penalty provision. No effect on expenditures.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: If an insurer or a nonprofit health service plan fails to act in good faith with respect to a third-party claim under a property and casualty insurance policy, the Insurance Commissioner may impose an administrative penalty of up to \$125,000 for each violation. On finding a violation, the Commissioner may require an insurer or nonprofit health service plan to make restitution to each claimant who has suffered actual economic damages stemming from a violation. The restitution awarded may not exceed the actual amount of economic damages sustained, subject to the limits of any applicable insurance policy.

The Insurance Commissioner may require a property and casualty insurer or a health service plan to pay restitution to an insured for:

- actual damages up to the limits of any applicable insurance policy;
- the insured's expenses and litigation costs incurred as a result of pursuing an administrative complaint, including reasonable attorney's fees; and
- interest on all actual damages, expenses, and litigation costs incurred by the insured computed under the rate allowed at law and from the date on which the insured's claim would have been paid if the insurer had acted in good faith.

The amount of attorney's fees recovered from an insurer may not exceed one-third of the actual damages recovered. If an insurer or nonprofit health service plan, when committed with the frequency to indicate a general business practice, willfully fails to act in good faith in settling a third-party property and casualty insurance claim, the entity is guilty of a misdemeanor and on conviction, subject to a fine of up to \$100,000.

Current Law: "Good faith" means an informed judgment based on honesty and diligence supported by evidence that the insurer knew or should have known at the time the insurer made a decision on a claim.

Generally, if an insured seeks to challenge a determination by its insurer that a loss is not covered under the policy or the amount of coverage, the insured may (1) pursue a civil action for breach of contract; or (2) appeal the determination to MIA under the unfair claim settlement practices provisions. Under these provisions, it is an unfair claim settlement practice to refuse to pay a claim for an arbitrary or capricious reason.

If MIA determines that the unfair claim settlement practices provisions have been violated, it may order restitution of up to the amount of actual damages, subject to the policy's limits. MIA may (1) impose a penalty of up to \$2,500 for each violation of the unfair claim settlement practices provisions; and (2) issue a cease and desist order.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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