

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 790

(Senator Kelley, *et al.*)

Finance

Health and Government Operations

**Health Insurance - Communications Between Carriers and Enrollees -
Conformity With the Health Insurance Portability and Accountability Act
(HIPAA)**

This emergency bill requires the Insurance Commissioner to develop and make available a standardized form for an enrollee to use to request confidential communications from an insurer, nonprofit health service plan, health maintenance organization, or dental plan organization (collectively known as carriers). A carrier that requires an enrollee to make a request for confidential communications in writing must accept the standardized form. The bill may not be construed to limit acceptance by a carrier of any other form of written request from an enrollee for confidential communications from a carrier under the Health Insurance Portability and Accountability Act privacy rule (HIPAA privacy rule).

The bill also specifies that certain written notices from an insurer to a claimant regarding denial of a claim made on an individual health insurance policy and certain annual summary explanations of benefits provided to an insured are subject to confidential communications requirements under HIPAA privacy rule.

Fiscal Summary

State Effect: Any additional workload on the Maryland Insurance Administration can be handled within existing budgeted resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: On written request of the claimant, an insurer that denies a claim made on an individual health insurance policy must give written notice to the claimant that fully states the reason for denial. The reason given for denial may not act as an estoppel or limit the insurer from offering an additional reason for the denial.

Insurers and nonprofit health service plans that propose to issue or deliver individual, group, or blanket health insurance policies or contracts or to administer health benefit programs that provide hospital, medical, or surgical benefits on an expense-incurred basis must provide to an insured individual an annual summary explanation of benefits that covers the preceding 12-month period. The summary explanation of benefits must provide a summary of all claims filed by health care providers for services rendered to the insured individual or covered dependent of the insured individual during an inpatient hospitalization or an outpatient surgical procedure, the amount paid by the entity for each claim filed, and the balance owed by the insured individual for each claim filed.

Under HIPAA, covered entities may not use or disclose protected health information except either as the HIPAA privacy rule permits or as an individual authorizes in writing. Covered entities may disclose protected health information without an individual's authorization for such purposes as treatment, payment, health care operations, and public interest activities.

Under the HIPAA privacy rule, a health plan must permit individuals to request and must accommodate reasonable requests by individuals to receive communications of the individual's protected health information from the health plan by alternative means or at alternative locations, if the individual clearly states that the disclosure of the information could endanger the individual. An individual may be required to make a request for confidential communication in writing. Provision of a reasonable accommodation may be conditioned on (1) when appropriate, information as to how payment, if any, will be handled and (2) specification of an alternative address or other method of contact. A health plan may require that a request contain a statement that disclosure of all or part of the information to which the request pertains could endanger the individual.

Per § 20-102 of the Health-General Article, a minor has the same capacity as an adult to consent to medical or dental treatment if (1) the minor is married, a parent, or living separate and apart from the minor's parent/guardian and is self-supporting and (2) in the judgment of the attending physician, the life or health of the minor would be affected adversely by delaying treatment to obtain the consent of another individual. A minor has the same capacity as an adult to consent to treatment for or advice about drug abuse, alcoholism, venereal disease, pregnancy, or contraception (other than sterilization). A minor may also consent to physical examination and treatment of injuries from an alleged

rape or sexual offense or to obtain evidence of an alleged rape or sexual offense. A minor has the same capacity as an adult to consent to psychological treatment if, in the judgment of the attending physician or a psychologist, the life or health of the minor would be affected adversely by delaying treatment to obtain the consent of another individual.

Background: Carriers typically send communications related to health care services, such as explanations of benefits, to the policyholder. In some instances, this may inadvertently reveal protected health information about another family member (including a spouse or adult child) that the individual does not wish disclosed. Privacy concerns may encourage an individual to delay or avoid seeking services or to pay out-of-pocket despite insurance coverage. This may present a barrier to care for sensitive services such as reproductive care, substance abuse, or mental health. While confidential communication protections are already required under the HIPAA privacy rule, they are not well known.

In 2013, California enacted legislation that allows individuals with health insurance under another person's policy to submit a confidential communications request to their carrier when they seek sensitive services or when an insured individual feels that disclosure could lead to harm. Under that legislation, which takes effect January 1, 2015, when a confidential communications request is submitted, the individual will give the health plans a way to communicate with him or her directly about the sensitive services received instead of sending information to the main policyholder – often a parent or spouse.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management, Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

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