SB 586

Department of Legislative Services

Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 586 (Senator Middleton)
Finance

Health Insurance - Federal and State Mental Health and Addiction Parity Laws - Report on Compliance

This bill requires health maintenance organizations, insurers, and nonprofit health service plans (collectively known as carriers) subject to the federal Mental Health Parity and Addiction Equity Act (MHPAEA) to submit a report to the Insurance Commissioner certifying and outlining how contracts or health benefit plans designated by the Commissioner that will be offered for the next plan year comply with MHPAEA and applicable State mental health and addiction parity laws.

Fiscal Summary

State Effect: Special fund expenditures for the Maryland Insurance Administration (MIA) increase by *at least* $53,800 in FY 2016 to ensure compliance with the reporting requirements, as discussed below. Special fund revenues for MIA increase beginning in FY 2016 to the extent administrative penalties are imposed for noncompliance. Future years reflect annualization and inflation.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
SF Revenue	-	-	-	-	-
SF Expenditure	$53,800	$67,500	$70,700	$74,100	$77,600
Net Effect	($53,800)	($67,500)	($70,700)	($74,100)	($77,600)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The Insurance Commissioner must designate the contracts and health benefit plans in each market in which the carrier participates for which a report must be submitted. The designated contracts and health benefit plans must represent the full range of products that the carrier offers in each market.

The reporting requirement applies to a carrier even if mental health or substance use disorder benefits are offered through a contract with another entity.

The report must be submitted annually by April 1, beginning April 1, 2016, by the carrier-designated MHPAEA compliance officer. The report is a public record and must include, at a minimum:

- a list of all covered and excluded mental health and substance use disorder benefits by classification as well as the standards and factors used to define which benefits will be excluded from coverage;
- a list of any differences in financial requirements and quantitative treatment limitations that apply to mental health and substance use disorder benefits and medical and surgical benefits as well as an explanation for such differences;
- a description of the process used to develop or select the medical necessity criteria for mental health and substance use disorder benefits and medical and surgical benefits and an explanation of how to obtain the medical necessity criteria;
- identification of all nonquantitative treatment limitations that are applied through the medical necessity criteria to mental health and substance use disorder benefits and medical and surgical benefits, a description of the standards and factors used, and an explanation of how each limitation is applied;
- a list of all utilization review requirements that apply to mental health and substance use disorder benefits and medical and surgical benefits, a description of the standards and factors used, and a description of the process specified individuals must follow for seeking continued authorizations;
- identification of any nonquantitative treatment limitations (other than those applied through medical necessity criteria or utilization review requirements) that apply to mental health and substance use disorder benefits and medical and surgical benefits, a description of the standards and factors used, and an explanation of how each limitation is applied;
- a list of covered drugs for the treatment of mental health and substance use disorders, including the tiers for each covered drug, the standards and factors used to determine tier placement, identification of any nonquantitative treatment limitations applied to each covered drug, a description of the standards and factors

used to apply each limitation, and an explanation of how each limitation is applied to drug benefits;

- a description of the carrier's network admission, credentialing, and network closure standards for mental health and substance use disorder providers and medical and surgical providers; and
- a description of the carrier's process for determining the fee schedule and reimbursement rates for mental health and substance use disorder providers and medical and surgical providers.

The Insurance Commissioner must impose an administrative penalty of up to $5,000 for each violation and an additional penalty of up to $1,000 for each day the violation continues.

Current Law: Maryland's mental health parity law (§ 15-802 of the Insurance Article) prohibits discrimination against an individual with a mental illness, emotional disorder, drug abuse disorder, or alcohol abuse disorder by failing to provide benefits for the diagnosis and treatment of these illnesses under the same terms and conditions that apply for the diagnosis and treatment of physical illnesses.

Chapter 152 of 2012 established requirements for health benefit plans to be certified as qualified health benefit plans under the Maryland Health Benefit Exchange (MHBE). Chapter 152 requires a health benefit plan to meet any other requirements established by MHBE, including demonstrating compliance with MHPAEA. The MHBE *Carrier Reference Manual* states that MIA will perform a review of contract and certificate forms and rates to ensure compliance with MHPAEA.

MHPAEA requires group health plans of large employers, as well as qualified health plans sold in health insurance exchanges and in the small group and individual markets as of January 1, 2014, to equalize health benefits for addiction and mental health care and medical and surgical services in many fundamental ways.

MHPAEA prohibits group health plans from imposing separate or more restrictive financial requirements or treatment limitations on mental health and substance use disorder benefits than those imposed on other general medical benefits. Patients can no longer be denied insurance reimbursement when they reach a lifetime or annual spending cap imposed on mental health or substance use disorder care. MHPAEA also imposes nondiscrimination standards on medical management practices, medical necessity determinations, and provider network and compensation practices ("nonquantitative treatment limitations"). While an employer is not required to offer any health insurance coverage for addiction or mental health care, the coverage of any service for these disorders – including a primary care practitioner's treatment of depression or the coverage of any

medication for a mental or substance use disorder in a prescription drug formulary – renders the plan subject to MHPAEA.

In August 2014, MIA's Market Conduct Group sent carriers a survey to gather information on compliance with MHPAEA. The survey addresses differences in requirements across markets, classification of benefits, financial requirements and treatment limitations, nonquantitative treatment limitations, medical necessity criteria, formulary design for prescription drugs, and provider network standards. MIA is currently reviewing the responses to this survey.

State Revenues: To the extent the Insurance Commissioner imposes administrative penalties on carriers that do not comply with the bill's requirement, special fund revenues for MIA increase beginning in fiscal 2016.

State Expenditures: Special fund expenditures for MIA increase by *at least* $53,802 in fiscal 2016, which accounts for the bill's October 1, 2015 effective date. This estimate reflects the cost of hiring one full-time compliance officer to identify which carriers are required to report under the bill, receive reports, file reports, and prepare for Public Information Act requests. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	$49,078
One-time Start-up Costs	4,285
Ongoing Operating Expenses	439
Total FY 2016 State Expenditures	**$53,802**

Future years reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This estimate assumes that MIA receives several hundred reports and that, as the bill does not specifically require MIA to *review* the reports, verification of compliance is limited to whether a complete report is submitted by the required date (and does not include analysis or validation of the information submitted). To the extent the volume of the reports submitted is greater or the level of review required is more complex, MIA expenditures increase by a potentially significant amount.

MIA advises that the bill has a major fiscal and operational impact under the assumption that analysis or validation of the information submitted in the reports is undertaken. Thus, MIA advises four additional positions are required (three analysts to review the reports and one administrative assistant to help with filing and administrative services) at an estimated cost of $201,126 in fiscal 2016. In addition to personnel, MIA advises it incurs significant

additional expenses to assist with the review of certain data. Due to the level of sophistication of some of the information required in the reports, MIA would use an independent review organization (IRO) to analyze data such as medical necessity criteria and standards and factors for placing prescription drugs on particular tiers. Each review completed by an IRO costs approximately $600. This fee would apply to each specific type of criteria reviewed. MIA advises additional storage space would also be required.

Additional Information

Prior Introductions: Similar legislation, SB 585/HB 1001 of 2013, was heard by the Senate Finance and House Health and Operations committees, respectively. No further action was taken on SB 585. HB 1001 was withdrawn.

Cross File: HB 1010 (Delegate Kelly, *et al.*) - Health and Government Operations.

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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