

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE
Revised

Senate Bill 739 (Senator Astle, *et al.*)

Finance

Referred to Economic Matters

Health Insurance - Complaint Process for Adverse Decisions or Grievances

This amended bill requires health insurers and HMOs to establish an internal “grievance” process for “members”, authorizes the Insurance Administration to investigate member “complaints” about an insurance carrier’s “adverse decision”, and provides that a decision by the Insurance Administration may be appealed to the Office of Administrative Hearings. The Insurance Administration is authorized to (1) refer a case to an advisory committee of health care professionals for advice on medical issues related to adverse decisions or grievance decisions; (2) seek the advice of impartial health care professionals without convening an advisory committee; and (3) refer complaints not within its jurisdiction to the Health Advocacy Unit (HAU) of the Office of the Attorney General or other appropriate government agency for disposition or resolution. An insurance carrier has the burden of persuasion that its adverse decision or grievance decision is correct during review of a complaint by the Insurance Administration.

Fiscal Summary

State Effect: \$1,700 increase in general fund revenues due to appeal hearing filing fees, exclusive of penalty provisions; future year revenues increase with annualization and then remain constant. General fund expenditures increase by \$382,100 in FY 1998, exclusive of potential indeterminate increase for the State employee health benefit plan; future year expenditures increase with annualization and inflation.

(in dollars)	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
GF Revenues	\$1,700	\$3,400	\$3,400	\$3,400	\$3,400
GF Expenditures	382,100	473,900	487,600	501,800	516,600
Net Effect	(\$380,400)	(\$470,500)	(\$484,200)	(\$498,400)	(\$513,200)

Note: () - decrease; GF - general funds; FF - federal funds; SF - special fund

Local Effect: Minimal increase in revenues due to the bill's penalty provisions. Expenditures for local jurisdiction employee health benefits could increase by an indeterminate amount.

Small Business Effect: Potential meaningful effect on small businesses as discussed below.

Fiscal Analysis

Bill Summary: The bill requires health insurers and HMOs to (1) establish expedited grievance procedures for use in emergency cases; (2) make a decision within 60 days after a member first contacts the carrier except for emergency cases; (3) provide notification that HAU is available to assist with filing and mediation of grievances, when a member initiates a grievance; (4) send a member written notice of a decision which includes specific standards and criteria upon which the decision was based and the member's right to file a complaint with the Insurance Administration; (5) include information about the grievance process in policy and enrollment materials; (6) annually file a copy of the grievance process with the Insurance Administration and HAU; and (7) submit quarterly reports to the Insurance Administration that describe the number and outcome of grievance procedures and mediation efforts on adverse decisions. The bill provides that improperly failing to reimburse for medically necessary covered benefits on the part of a carrier is an unfair claim settlement practice. If the Insurance Administration determines that an adverse decision is improper, it is authorized to order the carrier to pay for the health care service.

HAU is required to (1) publish an annual report on all complaints by November 15 of each year and provide copies to various committees of the General Assembly; and (2) submit quarterly reports to the Insurance Administration that describe its activities on behalf of members who have participated in a grievance procedure. HAU is also required to make recommendations to various committees of the General Assembly about (1) the feasibility of transferring all or some of the Department of Health and Mental Hygiene's responsibilities with respect to utilization review and private review agents to the Insurance Administration; and (2) requiring all health insurers and HMOs to have a uniform complaint and review process in accordance with regulations issued by the Insurance Administration. HAU and the Insurance Administration are required to enter into a Memorandum of Understanding (MOU) by October 1, 1997 with regard to the format and contents of the annual report and funding from the Insurance Administration for HAU activities required by this bill. The Insurance Administration, as part of the annual report, must report on complaints filed against carriers related to a hospital length of stay or a requirement to have a service performed on an out-patient basis.

The bill takes effect January 1, 1998, except that the MOU provision takes effect on June 1, 1997. The Insurance Administration portion of the annual report sunsets on January 1, 2000.

Background: The Insurance Administration's Life and Health Inquiry and Investigation Unit receives and investigates complaints and requests for information about policy contracts. There are five positions to investigate an average of 4,000 annual consumer health insurance complaints.

The Health Advocacy Unit in the Attorney General's Office mediates medical billing and reimbursement disputes between health consumers and health insurers or health providers. The HAU currently mediates 875 complaints a year with two professional staff and has an 80 to 85% success rate in arriving at a satisfactory result for the consumer.

State Expenditures:

Grievance Filing Assistance and Mediation - Health Advocacy Unit

General fund expenditures for HAU could increase by an estimated \$165,122 in fiscal 1998, which reflects the bill's January 1, 1998 effective date. This estimate includes the cost of hiring three positions (two Consumer Affairs Supervisors and one Legal Secretary) to mediate an estimated 3,000 additional grievance filings generated by the bill's requirements for consumer notification of grievance filing services. The estimate includes salaries, fringe benefits, and ongoing operating expenses. It also includes a one-time expenditure of \$100,000 to (1) upgrade HAU's telephone trunk lines to handle additional complaint calls; and (2) upgrade HAU's computer system to accommodate a larger database.

Salaries and Fringe Benefits	\$46,482
Telephone/Computer System Upgrade	100,000
Other Operating Expenses	<u>18,640</u>
Total FY 1998 HAU Expenditures	\$165,122

Future year expenditures reflect (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 2% annual increases in ongoing operating expenses. Future year expenditures would decrease in the long-term, to the extent that insurance carriers are less likely to render an adverse decision to avoid the grievance, complaint, and appeal process.

Complaint Review - Insurance Administration

Fiscal 1998 general fund expenditures for the Insurance Administration could increase by an estimated \$84,379, which reflects the bill's January 1, 1998 effective date. This estimate includes the cost of hiring one Complaint Investigator and one Secretary to handle review and monitoring of complaints and scheduling of complaint hearings. The administration

currently does not make a determination on complaints of individuals denied health benefits coverage by insurers. The estimate includes \$45,000 to cover the costs of expert medical advice to review medical records and make recommendations on complaint determinations. The \$45,000 estimate assumes that (1) the Insurance Administration will handle around 300 complaints annually; (2) each complaint case will require three hours of an expert's time; (3) the medical experts will be compensated at a rate of \$100 per hour; and (4) the bill's January 1, 1998 effective date.

Salaries and Fringe Benefits	\$29,629
Medical Expertise	45,000
Other Operating Expenses	<u>9,750</u>
Total FY 1998 Insurance Administration Expenditures	\$84,379

Future year expenditures reflect (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 2% annual increases in ongoing operating expenses. Future year expenditures would decrease in the long-term, to the extent that insurance carriers are less likely to render an adverse decision to avoid the grievance, complaint, and appeal process.

Appeals - Office of Administrative Hearings

Office of Administrative Hearings (OAH) reimbursable fund expenditures could increase by an estimated \$132,610 in fiscal 1998, which reflects the bill's January 1, 1998 effective date.

OAH's expenditures will increase due to additional appeals resulting from Insurance Administration determinations. Funding for OAH comes primarily from State agencies reimbursements to OAH based on the amount of time spent on the cases; therefore, reimbursable funds reflect general fund expenditures in State agencies. This estimate reflects the cost of hiring three Administrative Law Judges, one Secretary, and one Docket Specialist to handle additional appeal hearings. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- ° there will be 300 Insurance Administration determinations regarding medical necessity;
- ° 75%, or 225, of those complaints will be appealed to the OAH;
- ° each appeal takes 20 hours, resulting in 4,500 additional judge hours; and
- ° each 1,608 judge hours requires a full-time Administrative Law Judge; every three Judges requires a Secretary and a Docket Specialist.

Salaries and Fringe Benefits	104,560
Other Operating Expenses	<u>28,050</u>

Total FY 1998 OAH Expenditures \$132,610

Future year expenditures reflect (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 2% annual increases in ongoing operating expenses. Future year expenditures would decrease in the long-term, to the extent that insurance carriers are less likely to render an adverse decision to avoid the grievance, complaint, and appeal process.

State Employee Health Benefit Plan Expenses - Department of Budget and Management

The Department of Budget and Management (DBM) advises that general fund expenditures could increase by an estimated \$260,000 in fiscal 1998, which reflects the bill's January 1, 1998 effective date. This estimate assumes that health insurers and HMOs will incur administrative costs in responding to the bill's provisions, which will be passed on to the State employee health insurance plan. The bill's requirements that could create additional workload including (1) developing an internal complaint and review process; (2) referencing specific criteria and standards upon which an adverse decision is based; and (3) carrying the burden of persuasion that an adverse decision is correct.

The Department of Fiscal Services advises that while expenditures could increase by an indeterminate amount, State expenditures would be less than the \$260,000 for the following reasons:

- (1) The State employee health benefit plan would not incur the increased costs directly. Any increase to State expenditures would result from increased premiums since the State employee health benefit plan is insured for HMO and POS plans. In order to satisfy the requirements of the bill, HMO and POS plans would incur the increased administrative costs and likely would pass some of the increased costs onto the State employee health benefit plan through higher premiums. However, about 20% of increased State expenditures through higher premiums for the employee health benefit plan will be reimbursable through employee contributions.
- (2) Many health insurers and HMOs already have internal complaint and review processes.

State Revenues:

Office of Administrative Hearings Filing Fees

General fund filing fee revenues could increase by \$1,688, which reflects (1) 225 hearings;

(2) a fee of \$15; and (3) the bill's January 1, 1998 effective date.

Future year revenues increase with annualization and then remain constant.

Penalty Revenues

The bill's provision that improperly failing to reimburse for medically necessary covered benefits on the part of a carrier is an unfair claim settlement practice triggers several possible penalties: (1) a monetary penalty of up to \$500 for each violation; (2) in addition to any administrative penalty, a person who violates a provision is guilty of a misdemeanor and on conviction is subject to a fine not greater than \$100,000; (3) revocation of a certificate of authority and/or a penalty of between \$100 and \$50,000; (4) requirement that restitution be made to a claimant who has suffered financial injury; and (5) a cease and desist order.

Therefore, general fund revenues could increase under the bill's monetary penalty provisions for those cases heard in the District Court, depending upon the number of convictions and on the number and magnitude of any administrative fines imposed by the Insurance Administration. Any such increase is assumed to be minimal.

Local Revenues: Revenues could increase under the bill's monetary penalty provisions for those cases heard in the circuit courts, depending upon the number of convictions and fines imposed.

Local Expenditures: Expenditures for local jurisdiction employee health benefits could increase by an indeterminate amount, depending upon the current type of health insurance coverage offered and the number of employees.

Small Business Effect: Although most health insurers are large businesses, there are some small business nonprofit dental and vision insurers. These small businesses could face increased administrative costs (depending on whether they have already implemented an internal complaint and review process), medical costs, and a greater number of penalty fines.

To the extent that costs increase as a result of this bill and health carriers raise premiums to cover that increase, self-employed persons and small businesses that offer health insurance could face higher health care costs. Alternatively, small businesses could pass an increase in health insurance premium costs onto their employees.

Information Source(s): Insurance Administration, Office of the Attorney General, Department of Budget and Management, Department of Health and Mental Hygiene, Office of Administrative Hearings, Department of Fiscal Services

Fiscal Note History: First Reader - February 26, 1997
ncs Revised - Senate Third Reader - March 26, 1997

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