Department of Legislative Services

Maryland General Assembly

FISCAL NOTE
Revised

Senate Bill 401 (Senator Dorman, *et al.*)
Finance & Econ. & Environ. Affairs

Health Insurance - Complaint Process for Adverse Decisions and Grievances

This bill requires each health insurer and HMO (carrier) to establish an internal grievance process for members to address complaints regarding a carrier's adverse decision resulting from utilization review. The bill authorizes the Insurance Administration to investigate and make a final determination on all complaints filed with the Commissioner about a carrier's adverse decision. The Insurance Commissioner is the single point of entry for complaints about carriers, but may refer complaints to the Health Advocacy Unit (HAU) of the Office of the Attorney General, the Department of Health and Mental Hygiene (DHMH), or other appropriate government agency for disposition or resolution.

The bill creates a Health Care Regulatory Fund to pay the expenses incurred by the Insurance Administration relating to the bill. The fund will consist of revenues from a health care regulatory assessment on each carrier. The bill transfers the responsibility of certifying private review agents from DHMH to the Insurance Administration. In addition, the bill establishes the process and requirements for the certification of HMO medical directors by the Commissioner. The Commissioner may charge an application fee of no more than $100. A medical director must be a State-licensed physician.

This bill takes effect January 1, 1999. It applies to all insurance policies issued or existing on or after January 1, 1999 and all adverse decisions rendered on or after January 1, 1999.

Fiscal Summary

State Effect: Special fund expenditures could increase by at least $263,800 in FY 1999. Actual expenditures may be higher depending on the increase in the number of complaints and appeals. There may be additional indeterminate expenditures for the Medicaid program and the State Employee Health Benefit Plan. Future year expenditures reflect annualization

and inflation. Special and general fund revenues would increase by around $265,500 from the assessment on carriers and hearing filing fees. The increased general fund revenues are exclusive of medical director certification fees, the insurance premiums tax, rate and form filing fees, and penalties. Future year revenues increase by an amount to offset expenditures due to this bill, and reflect annualized hearing filing fees.

(in dollars)	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
GF Revenues	$1,700	$3,400	$3,400	$3,400	$3,400
SF Revenues	$263,800	$378,500	$391,900	$405,900	$420,300
SF Expenditures	$263,800	$378,500	$391,900	$405,900	$420,300
Net Effect	$1,700	$3,400	$3,400	$3,400	$3,400

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

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 minimal effect on small businesses.

Fiscal Analysis

Bill Summary: The bill provides that the Health Care Regulatory Fund is a special fund. The health care regulatory assessment will be based on the percentage of gross direct premiums written in the State that is attributable to that carrier in the prior calendar year. By January 1, 2000, the Commissioner must recommend to the General Assembly whether the appeals process should be expanded to include complaints based on all adverse decisions, not just those resulting from utilization review. In addition, the report must evaluate the correlation between the amount of the health care assessment collected from each carrier and the number of complaints filed with the Commissioner relative to the expenses incurred by the Insurance Administration in reviewing those complaints.

The bill specifies the requirements for a carrier's grievance process, which include: (1) providing notification that HAU is available to assist with filing and mediation of grievances when a member initiates a grievance; (2) sending 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; and (3) including information about the grievance process in policy and enrollment materials.
The Insurance Administration may base its final determination on the advice of an independent review organization or medical expert. The carrier is responsible for paying the reasonable expenses of the independent review organization or medical expert selected by the

Commissioner. The bill establishes the qualifications of independent review organizations and medical experts.

If the Insurance Administration determines that an adverse decision after utilization review is improper, it is authorized to order the carrier to pay for the health care service. The Insurance Administration must submit a report to the Governor and the General Assembly, annually, based on grievance procedure information submitted by carriers. The report must include the number of complaints filed against each carrier related to hospital length of stay or a requirement to have a service performed on an outpatient basis, and the extent to which the complaints are related to a clinical practice guideline. The report provision of the bill sunsets December 31, 2000.

HAU is required to: (1) publish a report on all complaints by each November 1, and provide copies to the Governor and 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. The report must include an evaluation of the effectiveness of the grievance and complaint process of a carrier and any recommendations for changing it. HAU is also required to make recommendations to various committees of the General Assembly about the feasibility of requiring all health insurers and HMOs to have a uniform internal grievance 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, 1998 with regard to: (1) the format and contents of the annual report; and (2) funding from the Insurance Administration for the activities of HAU pertaining to this bill. The MOU provision takes effect on June 1, 1998.

The bill prohibits a carrier from denying or terminating a physician's participation on its provider panel or penalizing a provider for appealing an adverse decision or filing a grievance or complaint on behalf of a patient.

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:

Expenditures relating to the Complaint and Grievance Process

Health Advocacy Unit and Insurance Administration

The Health Advocacy Unit (HAU) of the Office of the Attorney General advises that special fund expenditures for HAU could increase by an estimated $223,564 in fiscal 1999, which reflects the bill's January 1, 1999 effective date. This estimate covers the cost of hiring six positions (four Consumer Affairs Supervisors and two Legal Secretaries). It includes salaries, fringe benefits, and ongoing operating expenses. It also includes a one-time expenditure of $100,000 to upgrade telephone trunk lines to handle additional complaint calls and upgrade the computer system to accommodate a larger database. The estimate is based on the assumption that HAU would receive an additional 6,000 complaints annually, of which 3,000 would be referred from the Insurance Administration and 3,000 new complaints would come directly from members.

The Insurance Administration advises that special fund expenditures for their agency could increase by an estimated $247,123 in fiscal 1999, which accounts for the bill's January 1, 1999 effective date. This estimate reflects the cost of hiring ten positions (six Insurance Investigators, two Medical Insurance Investigators (Registered Nurses), and two Office Secretaries). It includes salaries, fringe benefits, and ongoing operating expenses. The estimate is based on the assumption that there will be a significant increase in the workload of the Consumer Complaints Section in processing and investigating new complaints and assisting in the determination of appropriate medical care.

The expenditures for HAU and MIA are predicated on the assumption that complaints will increase significantly as a result of this bill. While the bill creates a channel for members through which complaints and appeals may be filed and facilitates the grievance process, without actual experience it is difficult to reliably estimate the extent of any increase in complaints. Moreover, the bill specifies an exhaustive process for grievances and appeals with the carrier and HAU will be available to mediate a resolution between consumers and the private review agent/carrier, suggesting that many complaints may be resolved before the need for a final determination by the Insurance Administration. Consequently, the Department of Legislative Services advises that expenditures for the two agencies in the first year would increase by approximately $173,120, which reflects the January 1, 1999 effective date. This estimate includes the cost of hiring six positions between the two agencies and a one-time expenditure of $50,000 for any hardware upgrades. If the actual experience of the agencies warrants additional personnel, a request could be submitted through the budgetary process in subsequent years.

Salaries and Fringe Benefits	$106,500
Telephone/Computer System Upgrade	50,000
Operating Expenses	16,620
Total FY 1999 HAU and MIA Expenditures	**$173,120**

Future year expenditures reflect (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Appeals - Office of Administrative Hearings

Office of Administrative Hearings (OAH) reimbursable fund expenditures could increase by an estimated $31,929 in fiscal 1999, which reflects the bill's January 1, 1999 effective date. OAH's expenditures will increase due to additional appeals resulting from Insurance Administration determinations. Funding for OAH comes primarily from State agency 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 one Administrative Law Judge to handle additional appeal hearings. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Without actual experience, it is difficult to reliably estimate the number of complaints that will be filed with the Insurance Administration and, hence, the number of appeals that will be filed with OAH. The assumptions used in calculating the estimate are based on information provided last year by the Insurance Administration and are stated below:

- there will be 300 Insurance Administration determinations;
- 80 (27%) of the determinations will be appealed to the OAH;
- each appeal takes 20 hours, resulting in 1,600 additional judge hours; and
- each 1,608 judge hours requires a full-time Administrative Law Judge.

Salaries and Fringe Benefits	$26,204
Other Operating Expenses	5,725
Total FY 1999 OAH Expenditures	**$31,929**

Future year expenditures reflect (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

The Department of Health and Mental Hygiene - Medicaid Program

The Medicaid program currently has a process for reviewing complaints and resolving grievances. Complaints that are not resolved immediately are referred to the Ombudsman

program in the local health department of each jurisdiction. This bill could potentially increase health care costs for the Medicaid program if it results in a determination regarding a health care service that is contrary to a decision made through the Medicaid complaints and appeals process.

The federal Health Care Financing Administration requires the Medicaid program to operate an enrollee hotline (for complaints), establish a process for tracking and responding to Medicaid recipient's grievances, and report the information to the federal government on a monthly basis. DHMH will continue to compile and report this information regarding Medicaid recipients even while the Insurance Administration, as required by this bill, is managing this information.

Expenditures relating to the Certification of Private Review Agents and Medical Directors

Insurance Administration

The Insurance Administration advises that special fund expenditures could increase by an estimated $121,248 in fiscal 1999, which reflects the bill's January 1, 1999 effective date. This estimate includes the cost of hiring three positions (one Physician-Administrator, one Administrative Officer, and one Typist Clerk) to administer the certification of private review agents and medical directors; and an additional Analyst position to handle the increased workload in rate and form filings as a result of this bill. It includes salaries, fringe benefits, and ongoing operating expenses.

While the bill's requirements could lead to additional rate and form filings by carriers and additional workload for the Insurance Administration, it is assumed that the increased workload could be absorbed within existing resources. Consequently, Legislative Services advises that special fund expenditures for the Insurance Administration could increase by an estimated $88,343 in fiscal 1999, which covers the cost of certifying private review agents and medical directors. This estimate reflects the bill's January 1, 1999 effective date.

Salaries and Fringe Benefits	$80,593
Operating Expenses	7,750
Total FY 1999 MIA Expenditures	**$88,343**

Future year expenditures reflect (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

The Department of Health and Mental Hygiene - Licensing and Certification

As a result of the transfer of authority to certify private review agents from DHMH to Insurance Administration, expenditures for DHMH will decrease by $29,545. This estimate reflects the elimination of one position within Licensing and Certification and the bill's January 1, 1999 effective date.

Salary and Fringe Benefits	($29,145)
Operating Expenses	(400)
Total FY 1999 DHMH Expenditures	**($29,545)**

Future year expenditure reductions reflect (1) full salary with 3.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Other Expenditures

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

Expenditures for the State Employee Health Benefit Plan could increase by an indeterminate amount in fiscal 1999. This estimate assumes that health insurers and HMOs will incur additional administrative and health care 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 administrative workload for carriers include (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. In addition, the bill could reduce a carrier's ability to control utilization of health care services, thereby resulting in higher health care expenditures.

State Revenues:

Special Fund Revenues from the Health Care Regulatory Assessment on Carriers

The bill authorizes the Insurance Administration to set a health care regulatory assessment on carriers such that revenues from the assessment would offset the increased expenditures as a result of this bill. The revenues collected from the assessment would be deposited in the Health Care Regulatory Fund. Consequently, special fund revenues could increase by $263,847 in fiscal 1999.

Office of Administrative Hearings Filing Fees

General fund filing fee revenues could increase by $1,687, which reflects (1) 225 hearings; (2) a fee of $15; and (3) the bill's January 1, 1999 effective date.

Future year revenues increase with annualization and then remain constant.

Private Review Agent Certification Fees

Currently, there are approximately 130 private review agents certified by DHMH. The cost of the two-year certification is $1,500 per agent. Annualized general fund revenues from the certification fee for DHMH is $97,500. As a result of the transfer in authority from DHMH to Insurance Administration, general fund revenues for DHMH would decrease by $48,750 (assumes a rolling application) for fiscal 1999 which would be completely offset by a corresponding increase in general fund revenues for the Insurance Administration. The estimate accounts for the bill's January 1, 1999 effective date.

Medical Director Certification Fees

The bill authorizes the Insurance Administration to assess a maximum fee of $100 for certifying medical directors employed by HMOs. There are 22 licensed HMOs in Maryland. Each HMO may employ more than one medical director.

Insurance Premium Tax Revenues

General fund revenues could increase by an indeterminate minimal amount as a result of the State's 2% insurance premium tax on increased premiums. The State's premium tax is only applicable to "for-profit" insurance carriers.

Rate and Form Filing Fees

In addition, general fund revenues could increase by an indeterminate minimal amount in fiscal 1999 since the bill's requirements could subject insurance companies to rate and form filings. Each insurer (except HMOs) that revises its rates and amends its insurance policy must submit the proposed change(s) to the Insurance Administration and pay a $100 rate and form filing fee(s). It is not possible to estimate the number of insurers who will file new rates and forms as a result of the bill's requirements, since rate and form filings often combine several rate and policy amendments at one time.

Penalty Revenues

Failure by a carrier to comply with the provisions relating to the complaint and appeals process is an unfair claim settlement practice. The carrier could be subject to 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. A private review agent that violates the provisions relating to utilization review and the appeals process is subject to an administrative penalty of up to $5,000.

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.

Additional Comments: This bill creates a role for independent review organizations (IROs) in the complaint process for adverse decisions. However, IROs that could carry out the bill's requirements do not currently exist in Maryland.

Nationally, six states have legislated a role for independent review organizations. In Texas, the Medical Association Foundation serves as the state's IRO. The cost of an independent review in Texas is approximately $650.

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), and medical costs.

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, Prudential, Department of Legislative Services

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