

Department of Legislative Services
Maryland General Assembly

FISCAL NOTE

Senate Bill 84 (Senator Green. *et al.*)

Judicial Proceedings

Managed Care Entities - Health Care Treatment and Benefit Determinations - Liability and Utilization Review Complaint and Appeal Processes and Procedures

This bill establishes the liability of health insurers, nonprofit health service plans, and HMOs (carriers) and managed care entities for damages that an insured or enrollee suffers as a result of a health care treatment decision of the carrier or managed care entity. The bill also requires each carrier and private review agent (PRA) to establish procedures for the resolution of complaints regarding health care services provided and utilization review decisions made by the respective entities. In addition, the bill specifies the requirements of the complaint and appeal process.

The bill directs the Insurance Commissioner to establish standards and requirements for the certification of “independent review organizations”. In addition, the Commissioner must establish and charge fees to payors that cover the operating costs of independent review organizations (IRO). The bill requires each PRA to submit to the Commissioner a summary report of all complaints received during the year. The bill also authorizes the Commissioner to examine the complaints and all relevant documents of the PRA.

The bill takes effect July 1, 1998.

Fiscal Summary

State Effect: General fund expenditures could increase by \$33,300 in FY 1999, exclusive of potential significant expenditure increase for the State Employee Health Benefit Plan. Future year expenditures reflect inflation and annualization. Minimal increase in general fund revenues.

(in dollars)	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
GF Revenues	---	---	---	---	---
GF Expenditures	\$33,300	\$32,500	\$33,700	\$34,900	\$36,100
Net Effect	(\$33,300)	(\$32,500)	(\$33,700)	(\$34,900)	(\$36,100)

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

Local Effect: Potential increase in expenditures for local jurisdictions. No effect on

revenues.

Small Business Effect: Potential meaningful.

Fiscal Analysis

Bill Summary: An enrollee (or representative of the enrollee) may not maintain a cause of action unless the enrollee: (1) has exhausted the appeals and review process under utilization review; or (2) gives written notice of the claim and agrees to submit the claim to review by an independent review organization before instituting the action. An exemption from the above requirement will be made if the enrollee asserts that harm has already occurred to the enrollee and the independent review would not be beneficial to the enrollee.

The complaint system established by carriers must include notification to the enrollees of: (1) their right to appeal adverse determinations to independent review organizations; (2) the procedures for appealing adverse determinations; and (3) the right to immediate review if the enrollees have life-threatening conditions.

A private review agent must notify the insured or enrollee of a determination made in a utilization review. The insured or enrollee may appeal an adverse decision made by the private review agent. If the appeal of an adverse decision is denied by the private review agent, the enrollee may seek review of the determination by an independent review organization. The private review agent must comply with the determination of the independent review organization and must pay for the independent review.

This bill applies only to a cause of action or an adverse decision made on or after July 1, 1998. The bill also applies only to policies issued on or after July 1, 1998. Any policy issued before July 1, 1998 must comply with the requirements of the bill no later than July 1, 1999.

State Effect: The Insurance Administration advises that general fund expenditures could increase by \$60,786 in fiscal 1999. The estimate reflects the cost of hiring one Market Conduct Examiner and one Clerk to examine PRA reports and certify independent review organizations.

The Department of Legislative Services (DLS) notes that IROs which could carry out the bill's requirements do not currently exist in Maryland. Even though this bill creates a role for IROs in the complaint process for adverse decisions, it is assumed that there would be very few IROs that would form or enter Maryland to participate in the process. This assumption is based on the experience of several states that have legislated a role for IROs. For instance, Texas has only one IRO: the Medical Association Foundation. Consequently, DLS advises that general fund expenditures could increase by an estimated \$33,291 in fiscal 1999, which reflects a 90-day start-up delay. This estimate accounts for the cost of hiring one half-time

Market Conduct Examiner and one half-time Clerk. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$24,071
Operating Expenses	<u>9,220</u>
Total FY 1999 Administrative Expenditures	\$33,291

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.

Additionally, this bill could increase costs to carriers for the following reasons:

- the potential increase in liability faced by carriers could necessitate additional liability insurance;
- potential damages paid by the carrier; and
- health care costs could increase if a carrier's ability to control utilization of health care services is reduced.

If carriers incur increased costs, some of the increased costs may be passed on to the State Employee Health Benefit Plan. The extent of the increase would largely depend on the number of medical malpractice cases filed against carriers and the findings and judgement in those cases. The increase could be significant.

The bill could potentially increase the number of medical malpractice claims filed. It is anticipated that most medical malpractice claims would be filed in circuit court. Since clerks of the courts are compensated by the State, the increase in caseloads could result in additional expenditures for the State if there is a need for additional personnel in the clerks' offices in the future.

As a result of this bill, future Medicaid capitation rates to managed care organizations (MCOs) could increase to accommodate the increased costs incurred by those MCOs that are also HMOs.

If carriers raise premiums as a result of this bill, then 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. 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).

Local Expenditures: Expenditures for local jurisdictions could increase depending on the number of additional medical malpractice cases filed in circuit courts.

In addition, expenditures for local jurisdiction employee health benefits could increase, depending upon the current type of health care coverage offered and number of enrollees.

Small Business Effect: For the reasons discussed above, the effect on health insurance premiums for small businesses and self-employed individuals cannot be determined at this point, although it could be significant. In addition, the bill would increase administrative costs for small business PRAs.

The bill could result in increased business activity for alternative dispute resolution firms that are small businesses.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Health and Mental Hygiene (Licensing and Certification Administration, Health Services Cost Review Commission, Board of Physician Quality Assurance, Medical Care Policy Administration, Health Care Access and Cost Commission), Insurance Administration, Department of Budget and Management, Prudential Health, Department of Legislative Services

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Analysis by: Lina Walker

Reviewed by: John Rixey

Direct Inquiries to:

John Rixey, Coordinating Analyst

(410) 841-3710

(301) 858-3710