

Department of Legislative Services
Maryland General Assembly
1999 Session

FISCAL NOTE

House Bill 856 (Delegate Billings. *et al.*)

Economic Matters

Carriers and Managed Care Entities - Health Care Liability

This bill establishes the liability of a health insurer, nonprofit health service plan, HMO, and dental plan organization (carrier) for damages that an enrollee suffers as a result of the carrier's health care treatment decision.

Fiscal Summary

State Effect: Indeterminate but potentially significant expenditures increase for the State Employee Health Benefits Plan. Indeterminate minimal increase in special and general fund revenues.

Local Effect: Expenditures for local jurisdiction employee health benefits could increase by an indeterminate but potentially significant amount depending upon the current type of health care coverage offered and the number of enrollees. Revenues would not be affected.

Small Business Effect: Potential meaningful. Health insurance costs for small businesses and self-employed persons could increase by an indeterminate but potentially significant amount if carriers increase their premiums as a result of this bill.

Fiscal Analysis

Bill Summary: The bill imposes the duty to exercise ordinary care on a carrier when making health care treatment decisions and imposes liability for damages for harm to an enrollee for failure to do so. Carriers are liable for damages proximately caused by its agents or employees, but a carrier may claim as a defense that the carrier did not control, influence, or participate in the health care treatment decision and the carrier did not deny or delay payment for health care services recommended by a health care provider. The requirement that a

carrier exercise an ordinary duty of care does not create an obligation for the carrier to provide an enrollee with a health care service or treatment that is not generally covered under its health benefit plan. Noneconomic damages resulting from a cause of action against a carrier is limited by Maryland's personal injury liability cap, which is currently \$560,000, but may vary depending on when the injury occurs.

The bill also repeals the "corporate practice of medicine" defense generally available to managed care plans and other carriers.

State Expenditures: Expenditures for the State Employee Health Benefits Plan could increase by an indeterminate but potentially significant amount beginning in fiscal 2000. CareFirst Blue Cross Blue Shield estimates that the bill's provisions will substantially increase litigation costs, which would then be passed onto employers, such as the State plan, as increased premiums. It is unknown at this time how the bill's requirements would affect other carriers under the State plan.

Various recent studies by the U.S. Congressional Budget Office and the Kaiser Family Foundation on similar legislation suggest that the fiscal impact will not be as extensive as managed care organizations have predicted, and instead estimate premium increases between 0.1 and 1.2%. These figures are based on the assumption that managed care plans will take other cost-saving measures to minimize litigation costs, such as adopting relaxed review criteria and standards of medical necessity, purchasing liability insurance, establishing mandatory arbitration procedures, and increasing oversight and monitoring of providers.

As a point of reference only, if all carrier premiums increase by 1%, expenditures for the State Employee Health Benefits Plan could increase by \$2.7 million in fiscal 2000. This figure reflects \$532 million annual expenditures for the State plan, a January 1, 2000 effective date for new premiums, and a mix of 60% general funds, 20% special funds, and 20% federal funds. Twenty percent of the expenditures are reimbursable through employee contributions.

Expenditures for the Medicaid program are not expected to be affected. Expenditures for the Judiciary are not expected to be affected.

State Revenues: Special fund revenues could increase by an indeterminate minimal amount in fiscal 2000 because the bill's requirements could subject carriers to rate and form filings. Each carrier that revises its rates and amends its insurance policy must submit the proposed change(s) to the Maryland Insurance Administration (MIA) and pay a \$125 rate and form filing fee. The number of carriers who will file new rates and forms as a result of the bill's requirements cannot be reliably estimated at this time because carriers often combine several rate and policy amendments at one time when filing with MIA.

If carriers raise their premiums as a result of the bill's requirements, general fund revenues may 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 applicable only to "for-profit" insurance carriers.

Additional Comments: According to a report by the Kaiser Family Foundation on managed care plan liability, current laws in most states generally permit consumers to sue managed care plans for actions that injure them. In many states, however, managed care plans effectively avoid such lawsuits under the corporate practice of medicine laws. These laws have been interpreted by many courts as barring suits against HMOs and other carriers on the ground that carriers cannot be sued for medical malpractice if they are prohibited from practicing medicine. According to the State Board of Physician Quality Assurance, there is an implied prohibition in Maryland against the corporate practice of medicine by entities other than hospitals, related institutions, and HMOs (Health - General Article, §§ 19-351, 19-704).

Information Source(s): Kaiser Family Foundation, U.S. Congressional Budget Office, Department of Health and Mental Hygiene (Board of Physician Quality Assurance, Health Care Access and Cost Commission, Medicaid, Health Services Cost Review Commission), Judiciary (Administrative Office of the Courts), Maryland Insurance Administration, Department of Budget and Management (Employee Benefits Division), CareFirst Blue Cross Blue Shield, Department of Legislative Services

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