

Department of Legislative Services
Maryland General Assembly
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FISCAL NOTE
Revised

Senate Bill 903 (Senators Miller and Bromwell)

Finance

**Contracts Between Health Maintenance Organizations and Subscribers or Groups
of Subscribers - Subrogation Provisions**

This bill allows a contract between an HMO and its subscribers to contain a provision allowing the HMO to be subrogated to a cause of action a subscriber has against another person, to the extent that the HMO's payments or services resulted from the occurrence that gave rise to the cause of action. In addition, a nonprofit HMO that exclusively contracts with a physician group to provide health care services for the HMO's enrollees may be subrogated to a cause of action that a subscriber has against another person, subject to an established fee schedule for the services provided.

The bill provides that an HMO's subrogation contract cannot contain a provision allowing the HMO to recover any payments made to a subscriber under a personal injury protection (PIP) policy. An HMO also cannot recover medical expenses from a subscriber unless the subscriber recovers for medical expenses in a cause of action.

An HMO that includes a subrogation provision in a contract must: (1) use in its rating methodology an adjustment that reflects the subrogation; and (2) identify all amounts recovered through subrogation in its annual rate filing with the Maryland Insurance Administration (MIA).

The bill's provisions apply to subrogation recoveries recovered on or after January 1, 1976 and to any case pending or filed after June 1, 2000, but not to: (1) a case for which a final judgment has been rendered and appeals exhausted; or (2) a matter in which a final written liability insurance settlement has been reached and payment has been made.

The bill's provisions are severable.

State Effect: The bill would prevent, beginning in FY 2001, a potential 1%-2% annual premium increase for the State Employee Health Benefits Plan's HMOs. In addition, the bill would prevent: (1) a potential workload increase for the Judiciary; (2) a potential general fund revenue increase from the State's 2% insurance premium tax on for-profit carriers; and (3) a potential minimal special fund revenue increase for the MIA from the \$125 rate and form filing fee.

Local Effect: The bill could prevent expenditure increases for local government health benefits and workload increases for circuit courts. Revenues would not be affected.

Small Business Effect: Potential meaningful. The bill could prevent small business expenditure increases for employee health benefits.

Analysis

Current Law: In accordance with 19-701(f) of the Health-General Article, an HMO may only be compensated through: (1) a predetermined periodic rate basis for providing members with minimum services; (2) copayments; and (3) deductibles.

Background: A recent Maryland Court of Appeals decision, *Victor G. Riemer et al. v. Columbia Medical Plan, Inc.*, (1999), held that an HMO is barred from pursuing its members for restitution, reimbursement, or subrogation, when members receive damages arising from third-party tort claims. The opinion stated that, "the language of §19-701(f)(3) cannot be interpreted to include payment to an HMO by means of other methods, whether subrogation, restitution, or reimbursement."

For the past 25 years, HMOs have been seeking and recovering reimbursement from third-party tortfeasors.

State Fiscal Effect: If the bill is not enacted, HMOs will no longer be able to recover the costs of health services provided to an enrollee who was injured by a negligent third party. In addition, the court's decision may possibly allow enrollees to file suit against HMOs on a retroactive basis to recover unlawfully subrogated funds. CareFirst of Maryland and Mid-Atlantic Medical Services, Inc. (MAMSI) estimate that failure to enact this bill could result in annual 1%-2% HMO premium increases for the State Employee Health Benefits Plan, beginning in fiscal 2001. Additional lawsuits filed against HMOs could result in workload increases for the Judiciary if the bill fails to pass.

An HMO will be required, when submitting its annual rates to the MIA, to identify all amounts recovered through subrogation. HMOs currently file their rates with the MIA on an annual basis, and including the additional information will not materially affect MIA

finances.

In addition, HMOs currently account for subrogation recoveries in their rating methodologies. The bill thus codifies current practice and will not affect premiums. Accordingly, the bill's provisions will not affect the State Employee Health Benefits Plan. The bill's provisions do not apply to Medicaid managed care organizations.

Additional Information

Prior Introductions: None.

Cross File: HB 1434 (Delegates Taylor and Busch) - Economic Matters.

Information Source(s): CareFirst of Maryland, MAMSI, Judiciary (Administrative Office of the Courts), *The Daily Record*, Department of Legislative Services

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