

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

Senate Bill 490 (Senator Green, *et al.*)
Judicial Proceedings

Managed Care Entities - Health Care Treatment Decisions - 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.

The bill may be construed only prospectively and may not be applied to any cause of action arising before July 1, 2001.

The bill takes effect July 1, 2001.

Fiscal Summary

State Effect: Expenditures for the State Employee Health Benefits Plan could increase by a significant amount in FY 2002. Minimal general fund revenue increase from the State's 2% insurance premium tax on for-profit carriers. Minimal special fund revenue increase for the Maryland Insurance Administration from the \$125 rate and form filing fee. To the extent that the bill results in an increased number of lawsuits, the Health Claims Arbitration Office and the Judiciary could experience workload and/or expenditure increases. Any additional complaints filed with the Department of Health and Mental Hygiene's Office of Health Care Quality could be handled with existing resources.

Local Effect: Expenditures for local jurisdiction employee health benefits could increase by a significant amount if carriers raise their premiums as a result of the bill's requirements. Revenues would not be affected.

Small Business Effect: Meaningful. Health insurance costs for small businesses could increase by a significant amount.

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. A carrier is liable for damages proximately caused by its agents or employees, but a carrier may claim as a defense that: (1) the carrier did not control, influence, or participate in the health care treatment decision; or (2) 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 are limited by Maryland's personal injury liability cap, which is currently \$590,000, but may vary depending on when the injury occurs.

Current Law: The federal Employee Retirement Income Security Act of 1974 (ERISA) preempts Maryland law as it relates to most employer-sponsored employee health benefit plans. ERISA's preemption of state laws related to liability applies regardless of whether the employer plan is insured or self-insured. An enrollee in an ERISA plan may sue only the carrier to recover the actual cost of any benefits denied and may not collect noneconomic damages.

Background: This bill is intended to provide a clear statutory basis on which a person may sue a carrier or managed care organization and is modeled on a Texas law enacted in 1997 that requires managed care organizations to exercise ordinary care when making health care treatment decisions and imposing liability for resulting damages.

The Texas statute was challenged by Aetna U.S. HealthCare, which argued in federal court that the law was preempted by ERISA. In September 1998, a federal district court judge ruled that the provisions of the Texas law giving individuals the right to sue their carrier are not preempted by ERISA if such a suit is based on a "quality of care" issue, not a "denial of benefits" issue. A Fifth Circuit opinion in another Texas case affirms this distinction between "quality of care" and "denial of benefits" causes of action. While these federal court rulings do not directly affect Maryland law, most states and the federal government are watching how Texas' HMO liability law is interpreted by the courts.

At the federal level, similar legislation has been considered in Congress. In July 1999, the Senate passed a Republican-sponsored version of the Patients' Bill of Rights Act of 1999 (S1344) that amended ERISA to include a grievance procedure for enrollees. The House passed HR 2723 in October 1999, a bipartisan measure, establishing the right to sue insurance companies for damages resulting from denial of care or maltreatment. HR 2723 and portions of S1344 were added as new matter to HR 2990. In February 2000, HR 2990 was tabled because the House and Senate could not reconcile differences within the bill. To date, the bill has not been addressed by the 107th Congress.

State Fiscal Effect:

Office of Health Care Quality: The Department of Health and Mental Hygiene's Office of Health Care Quality (OHCQ) maintains an HMO quality assurance unit responsible for investigating HMO quality of care claims that have been referred by the Insurance Administration. To the extent that the bill's requirements increase HMO quality of care complaints, the OHCQ's workload may increase. Any increase is assumed to be minimal and could be handled with existing resources.

State Employee Health Benefits Plan: State Employee Health Benefits Plan expenditures could increase by a significant amount in fiscal 2002. According to a U.S. Congressional Budget Office study of similar federal legislation, removing the ERISA preemption as a barrier to damage awards against health plans would increase health care premiums by 1.4%. *For illustrative purposes only*, if carrier premiums increase by 1.4%, expenditures for the State plan could increase by \$6.3 million in fiscal 2002. This figure reflects \$600 million in annual expenditures for medical, dental, and mental health benefits, a January 1, 2002, 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.

Additional Information

Prior Introductions: Similar bills were introduced in the past three sessions. SB 9 of 2000 was reported unfavorably from the Senate Judicial Proceedings Committee. SB 261 of 1999 also was reported unfavorably from the Judicial Proceedings Committee. SB 84 of 1998 was not reported from the Judicial Proceedings Committee.

Cross File: HB 223 is listed as a cross file, although it is different.

Information Source(s): United States Code, National Conference of State Legislatures, U.S. Senate, U.S. House of Representatives, U.S. Congressional Budget Office, Henry J. Kaiser Family Foundation, Department of Health and Mental Hygiene (Medicaid, Maryland Health Care Commission, Office of Health Care Quality), Maryland Insurance Administration, Department of Budget and Management (Employee Benefits Division), Department of Legislative Services

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Analysis by: Susan D. John

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510