Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 130 (Senator Forehand)
Finance

Health Insurance - Use of Prescription Information

This bill prohibits insurers, nonprofit health service plans, and HMOs (carriers) from denying, canceling, or refusing to renew an individual health insurance policy solely based on the prescription drug history of an insured. Carriers may only exhibit, discuss, or reveal the contents of a prescription with (1) the patient; (2) the prescriber or other health care provider caring for the patient; (3) a licensed pharmacist serving the patient; or (4) a person authorized by law to receive the information. The bill does not prohibit legitimate peer review of health care providers or the internal review of prescribing information for quality assurance or payment purposes.

Fiscal Summary

State Effect: Enforcement can be handled with existing budgeted resources of the Maryland Insurance Administration.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Carriers may medically underwrite health insurance policies in the individual market. A carrier may not deny, cancel, or refuse to renew a policy solely because the insured has been exposed to diethylstilbestrol (DES) or had a breast implant. If a carrier denies an individual coverage under a medically underwritten health benefit plan, the carrier must provide specific information regarding the availability of coverage

under the Maryland Health Insurance Plan (MHIP) and provide MHIP with contact information about the individual and the insurance producer, if applicable.

A carrier may not cancel or refuse to renew an individual health benefit plan except for (1) nonpayment of premiums; (2) fraud; (3) misrepresentation of material fact; (4) cancellation by the carrier of all individual health benefit plans in the State; (5) an individual who is no longer in the service area; or (6) termination of association membership where coverage is provided only through the association.

Under the federal Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule "covered entities," including carriers, health care clearinghouses, and health care providers, may not use or disclose protected health information, except either as the privacy rule permits or as an individual authorizes in writing. Covered entities may disclose protected health information, without an individual's authorization for such purposes as treatment, payment, health care operations, and public interest activities. Not all entities that receive protected health information secondary or "downstream" to covered entities are subject to the privacy rule.

Maryland's Confidentiality of Medical Records Act requires health care providers and facilities to keep the medical record of a patient confidential and obtain written consent for disclosure. Generally, a person to whom a medical record is disclosed may not redisclose the medical record unless authorized by the person in interest. Exceptions are made for such purposes as provision of health care services, billing, utilization review, and legal claims.

An insurer is generally prohibited from disclosing an insured's medical records without written authorization. Exceptions include legal proceedings, coordination of benefits, reinsurance, renewal of insurance, and claims administration.

Background: Medical underwriting assesses the health and risk status of an insurance applicant in order to decide whether to issue coverage and at what price. Insurers underwrite coverage because sick individuals are more expensive to insure. By excluding expensive risks, carriers can keep the cost of coverage lower for those they insure.

In recent years, corporate data mining of personal health information has increased. Whereas medical underwriting is traditionally performed using medical records, carriers may now purchase pharmacy history information on prospective clients through services such as Milliman's IntelliScript and Ingenix's MedPoint. With authorization from the prospective client, prescription information including drug, dosage, fill dates, pharmacy, and prescriber are electronically transmitted to insurance company underwriters along with possible diagnoses and predictive risk assessments. The information can be used to

determine if the prospective client should receive an offer of insurance and to determine premiums. Benefits of this practice may include timelier coverage decisions for applicants and cost savings to carriers; however, concerns exist regarding patient privacy and the potential for misinterpretation and misuse.

The Federal Trade Commission defines Milliman and Ingenix as "consumer reporting agencies" subject to the federal Fair Credit Reporting Act. Thus, these services, along with existing agencies such as the Medical Information Bureau, which compiles codes signifying certain health conditions for medical underwriting and fraud detection purposes, must provide certain disclosures to users. Specifically, consumers who apply for individual health insurance and are turned down because of something in a report from one of the services are entitled to a copy of the report from their insurance company and an opportunity to dispute the accuracy of information.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management, Department of Health and Mental Hygiene, Maryland Insurance Administration, Federal Trade Commission, Department of Legislative Services

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