HB 318

Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 318 (Delegate Barkley, *et al.*)
Health and Government Operations and Environmental Matters

Health Insurance - Coverage, Reimbursement, and Benefits - Counties, County School Systems, and State Employee and Retiree Health and Welfare Benefits Program

This bill makes counties, county school systems, and the State Employee and Retiree Health and Welfare Benefits Program (State plan) subject to Title 15, Subtitles 4, 7, and 8 of the Insurance Article. These health insurance laws relate to eligibility and continuation of coverage, required reimbursement of health care providers, and mandated benefits and are currently applicable to insured health benefit plans only.

The bill applies to counties, county school systems, and the State plan at the time their health benefit plans are issued, delivered, or renewed in the State on or after January 1, 2010.

Fiscal Summary

State Effect: The bill codifies existing practice for the State plan as it voluntarily complies with State health insurance mandates under current law. However, in future years State plan expenditures may increase by a significant amount to the extent additional health insurance mandates are added. No effect on revenues.

Local Effect: To the extent that the coverage mandated under the bill exceeds that currently provided by local governments, health insurance expenditures for local governments increase by a potentially significant amount beginning in FY 2010. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None. The bill does not apply to the small group health insurance market.

Analysis

Current Law:

Eligibility and Continuation of Coverage: In general, Subtitle 4 requires health insurance policies and contracts to:

- cover newborns, newly adopted children, minors for whom guardianship has been granted, and certain grandchildren;
- allow a child dependent to remain on an insured's plan until age 25;
- allow unmarried, dependent children to remain on an insured's plan if they are chiefly dependent on the insured for support due to physical or mental incapacity;
- cover a student older than age 18 who is enrolled in school less than full time as a result of a documented disability;
- provide family coverage regardless of the marital status of the insured or subscriber;
- offer the same benefits and eligibility guidelines to a domestic partner or the child dependent of a domestic partner as are provided to an insured or subscriber;
- allow the addition of certain dependent children upon the death of a spouse;
- allow a parent required under a court order to provide coverage for a child to enroll in family coverage and include the child regardless of enrollment period restrictions;
- provide a right of recovery by the State for Medicaid claims paid for enrollees; and
- provide continuation coverage for surviving spouses, dependent children, divorced spouses, and involuntarily terminated employees.

Group policies must allow an individual whose group coverage is terminated to convert to an individual policy, including a disability income insurance policy. Group policies must also provide the same conversion rights to a covered dependent spouse if the dependent spouse ceases to be a qualified family member because of divorce or death.

Required Reimbursement of Health Care Providers: In general, Subtitle 7 requires health insurance policies, contracts, and certificates to reimburse for any covered service if a practitioner is providing services within the lawful scope of practice. Policies, contracts, and certificates must provide the option of covering services rendered by a certified nurse

practitioner and must reimburse for covered services provided by chiropractors, licensed certified social workers, licensed clinical alcohol and drug counselors, licensed clinical marriage and family therapists, licensed clinical professional counselors, nurse anesthetists, nurse midwives, optometrists, physical therapists, physician assistants, podiatrists, and psychologists. To the extent required under federal law, a carrier must reimburse a community health resource.

Mandated Health Insurance Benefits: Subtitle 8 requires certain carriers to provide 43 mandated health insurance benefits. These benefits are listed in **Exhibit 1**.

Exhibit 1
Maryland's Mandated Health Insurance Benefits[1]

- Alzheimer's
- Mental illness and drug and alcohol abuse
- Blood products
- Off-label use of drugs
- Pharmaceutical products
- Choice of pharmacy
- Medical foods & modified food products
- Home health care
- Hospice care
- In vitro fertilization
- Hospitalization benefits for childbirth
- Length of stay for mothers of newborn
- Disability due to pregnancy or childbirth
- Mammograms
- Reconstructive breast surgery
- Routine gynecological care
- Child wellness
- Treatment of cleft lip and cleft palate
- OP services and second opinions
- Prosthetic devices & orthopedic braces
- Diagnostic/surgical procedures for bones of face, head, & neck
- Diabetes equipment, supplies, & self management training
- Osteoporosis treatment
- Maintenance drugs
- Detection of prostate cancer
- Contraceptives
- Clinical trials
- General anesthesia for dental care
- Chlamydia screening
- Referrals to specialists
- Prescription drugs and devices
- Length of stay for mastectomies
- Extension of benefits
- Prosthesis following mastectomy
- Habilitative services for children
- Wigs for hair loss due to chemotherapy
- Colorectal cancer screening
- Hearing aids for a minor child
- Treatment of morbid obesity
- Residential crisis services
- Smoking Cessation
- Prescription drug cost-share limit
- Amino acid-based elemental formula

[1]Benefits mandated as of February 2009.
Source: Department of Legislative Services; Laws of Maryland

Background: Employers and government entities have two major options when providing health insurance benefits. They can purchase an insured plan from an insurance company or they can self-insure by assuming risk and paying all claims for services themselves, usually through a third-party administrator. The federal Employee Retirement Income Security Act (ERISA) limits states' ability to require employers to offer insurance coverage and exempts the coverage offered by self-insured entities from state insurance regulation. Therefore, the health insurance requirements under Title 15, Subtitles 4, 7, and 8 of the Insurance Article apply only to *insured* health benefit plans.

Government entities that self-fund their health benefit plans are *not exempt* under ERISA from state regulation and health insurance mandates. In Maryland, these entities have instead been exempt from these requirements based on the State definition of "insurance business." An insurance business includes the transaction of all matters pertaining to an insurance contract, either before or after it takes effect and all matters arising from an insurance contract or a claim under it. Insurance business *does not* include pooling by public entities for self-insurance of casualty, property, or health risks.

Insured vs. Self-insured Plans in Maryland: In fiscal 2008, the State plan offered State employees and retirees seven self-funded plans (including preferred provider organizations, point of service plans, mental health, and prescription drug services) and six fully insured plans (medical and dental health maintenance organizations and a dental preferred provider organization). Approximately 83% of State plan enrollees are covered under self-insured plans.

In 2008, the Maryland Association of Counties and the Maryland Association of Boards of Education conducted an informal survey of counties and county school boards about their insurance plans to which 22 counties and 19 school boards responded. Of the 22 counties, 13 were self-insured, 4 were fully insured, and 5 offered both self-insured and fully insured options. Of the 19 county school boards, 14 were self-insured, 1 was fully insured, and 4 offered both self-insured and fully insured options.

Mandated Health Insurance Benefits: Every four years, the Maryland Health Care Commission (MHCC) examines the fiscal impact of mandated health insurance benefits. MHCC's January 2008 report on mandated benefits found that these benefits account for 15.4% of total premium costs. This report also examined the degree to which existing mandated health insurance services are covered in self-funded plans noting that, overall, self-funded plans voluntarily cover 86% of the cost of mandated services. About half of employers cover the most expensive mandate – mental health and substance abuse benefits – at or above the mandated level, while the other half cover the benefit at a lesser level. All employers covered the second most expensive mandate – hospitalization for childbirth and the associated minimum length of stay. The only mandate that the majority of employers with self-funded plans do not cover is in vitro fertilization (IVF).

State Fiscal Effect: The State plan is currently in compliance, *on a voluntary basis*, with the health insurance laws applied to the State plan under the bill. Therefore, no direct fiscal effect is anticipated *at this time*. However, by subjecting the State plan to these requirements in statute, the Secretary of Budget and Management loses the potential for flexibility in benefit design in future years which might otherwise provide the State with options for cost savings.

Local Fiscal Effect: Local expenditures for health insurance for at least 18 counties and 18 county school boards are anticipated to increase by a potentially significant amount beginning in fiscal 2010. These counties and school boards have a minimum of one self-funded plan that must be revised to comply with the bill. The amount of additional expenditures required depends on the level of benefits currently offered under each plan. Some self-funded plans may be substantially in compliance with the bill, while others may not. The majority of additional expenditures are expected to result from the addition of mandated health insurance benefits under Subtitle 8 (see **Exhibit 1**).

For illustrative purposes only, Montgomery County estimates that the choice of pharmacy and maintenance drug mandates alone may cost the county more than $1.0 million and the Montgomery County Public Schools more than $2.0 million annually as both entities currently have a mandatory mail order prescription plan. Anne Arundel County also indicates that those mandates may cost the county approximately $1.2 million annually.

Local jurisdiction expenditures for other post-employment benefits also increase to the extent that enhanced health insurance benefits are provided. Counties may also face additional expenditures related to collective bargaining with labor unions as health insurance benefits have previously been key items for negotiation. In future years, as with the State plan, counties and county school boards also lose the potential for flexibility in benefit design, which might otherwise provide options for cost savings.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): *Study of Mandated Health Insurance Services: A Comparative Evaluation*, Maryland Health Care Commission, January 1, 2008; Baltimore City; Anne Arundel, Caroline, Howard, and Montgomery counties; Department of Budget and Management; Maryland State Department of Education; Maryland Insurance Administration; Department of Legislative Services

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