

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 57

(Chair, Finance Committee, *et al.*) (By Request -
Departmental - Insurance Administration, Maryland)

Finance

Health and Government Operations

**Health Insurance - Conformity with Federal Law - Mental Health Benefits,
Medical and Surgical Benefits for Mastectomies, and the Federal Patient
Protection and Affordable Care Act**

This emergency departmental bill conforms State law to the new federal Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) by requiring that large group contracts that offer mental health or substance abuse disorder benefits offer the benefits in parity with medical and surgical benefits conforms the State's reconstructive breast surgery mandate to federal law. In addition, the bill makes any changes affected by legislation enacted after January 1, 2010, null and void if those changes prevent a health plan from qualifying as a "grandfathered health plan" as defined by the federal Patient Protection and Affordable Care Act enacted in March 2010. Finally, the bill authorizes the Insurance Commissioner to enforce certain provisions of the federal Act and terminates the application and enforcement of those provisions on June 30, 2011.

Fiscal Summary

State Effect: Minimal special fund revenue increase for the Maryland Insurance Administration (MIA) from the \$125 rate and form filing fee in FY 2010. Review of form filings and required enforcement can be handled with existing MIA budgeted resources. No impact on the State Employee and Retiree Health and Welfare Benefits Program since the benefits required under the bill are already covered by the plan.

Local Effect: None.

Small Business Effect: MIA has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: Maryland generally requires large group health insurers to provide mental health coverage that is comparable to the coverage they provide for physical illnesses; however, MHPAEA requires further equity between the coverage levels for mental and physical health services.

A policy cannot discriminate against an individual with a mental illness or other disorder by failing to provide benefits for the diagnosis and treatment of these illnesses under the same terms and conditions that apply under a policy for the diagnosis and treatment of physical illnesses. For mental health coverage to be considered not discriminatory, a carrier must provide inpatient benefits for mental illness as it does for physical illness. A carrier must include a minimum of 60 days partial hospitalization for mental illness under the same terms and conditions that apply to the benefits available under the contract for physical illnesses. For outpatient services, carriers must provide coverage for mental illnesses, emotional disorders, drug or alcohol abuse, including psychological and neuropsychological testing for diagnostic purposes, at a rate (after deductibles) that is not less than:

- 80% coverage for the first 5 visits in one calendar year;
- 65% coverage of 6-30 visits; and
- 50% coverage for visits beyond 30.

The illness must be treatable, and the treatment must be medically necessary.

Substantially similar coverage is required under health maintenance organization (HMO) contracts.

Coverage of reconstructive breast surgery is 1 of 45 mandated health insurance benefits that certain carriers must provide to their enrollees. While the law requires carriers that provide hospital, medical, or surgical benefits to also cover reconstructive breast surgery performed on a nondiseased breast to establish symmetry when surgery is performed on the diseased breast, it does not specifically require the coverage of physical complications of all stages of mastectomy.

Background: MHPAEA applies to most group health plans with more than 50 workers.

While Maryland law conforms to the Mental Health Parity Act of 1996, key changes made by MHPAEA require that State law addressing benefits such as partial hospitalization be updated further.

MHPAEA becomes effective, and thus applies to large group plans with plan years beginning after, October 3, 2009. For large group plans with plan years beginning on January 1, of each year, the plan will need to comply with MHPAEA by January 1, 2010.

MIA advises that, under the bill, certain enrollees will have access to expanded benefits since, under MHPAEA, alcoholism, drug addiction, autism, bipolar disorder, depression, anxiety disorders, and other commonly diagnosed mental disorders must be treated more equitably by insurers.

The federal Women's Health and Cancer Rights Act (WHCRA) requires group health plans, insurance companies, and HMOs offering mastectomy coverage to provide coverage for the reconstruction of the breast, including any physical complications at all stages of mastectomy, including lymphedema. WHCRA sets a minimum standard to be sure this service is available for all women. This includes states with weaker or no laws covering breast reconstruction. As mentioned above, while Maryland law requires the coverage of reconstructive breast surgery, it does not specifically require the coverage of physical complications of all stages of mastectomy.

Under the federal Patient Protection and Affordable Care Act, certain provisions take effect within six months of enactment, including:

- no lifetime limits on the dollar value of health insurance coverage;
- no pre-existing condition limitations for children;
- prohibition on policy rescissions;
- coverage of preventive health services without cost-sharing; and
- extension of coverage to dependent children up to age 26.

The bill authorizes the Insurance Commissioner to enforce these provisions on policies issued or delivered in Maryland.

Also under the federal Act, individuals have the right to retain their current insurance policy. These policies, in effect on the date of enactment, are called "grandfathered health plans," and the federal government will provide additional guidance to states regarding these grandfathered health plans. The National Association of Insurance Commissioners has advised states that any changes made to a grandfathered health plan after the enactment date of the federal Act could prevent those plans from qualifying as grandfathered health plans. Therefore, the bill makes any changes affected by legislation enacted after January 1, 2010, null and void if those changes prevent a health plan from qualifying as a grandfathered health plan. There is an exception for changes made to bring a health plan into compliance with federal law, as the bill does with respect to mental health and breast reconstruction benefits.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): CareFirst Blue Cross/Blue Shield, Department of Budget and Management, Department of Health and Mental Hygiene, Maryland Insurance Administration, Centers for Medicare and Medicaid Services, Department of Legislative Services

Fiscal Note History: First Reader - January 18, 2010
ncs/mwc Revised - Senate Third Reader - March 31, 2010
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Health Insurance – Mental Health Benefits – Group Health Plans

BILL NUMBER: SB 57

PREPARED BY: Maryland Insurance Administration

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.