

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

House Bill 762  
Economic Matters

(Delegate Braveboy)

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**Insurance - Unfair Claim Settlement Practices - Refusal to Pay a Claim**

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This bill alters the circumstances under which failure to pay a claim is an unfair claim settlement practice by an insurer, nonprofit health service plan, or health maintenance organization to include *unreasonably* refusing to pay a claim based on all available information *from the insured or any other source*.

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**Fiscal Summary**

**State Effect:** The bill does not directly affect governmental operations or finances.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** It is an unfair claim settlement practice for an insurer, nonprofit health service plan, or health maintenance organization to, among other things, refuse to pay a claim for an arbitrary or capricious reason based on all available information.

If the Maryland Insurance Administration (MIA) determines that an unfair claim settlement practice provision has been violated, it may order restitution of up to the amount of actual damages, subject to the policy's limits. MIA may impose a penalty of up to \$2,500 for each violation of the unfair claim settlement practices provisions and issue a cease and desist order.

The term “arbitrary and capricious” as applied by MIA has been recognized by the Court of Appeals in *Berkshire Life Ins. Co. v. Maryland Ins. Admin.*, 142 Md. App. 628, 672 (2002), as authorizing an insurer to “properly deny a claim if the insurer has an otherwise lawful principle or standard which it applies across the board to all claimants and pursuant to which the insurer has acted reasonably or rationally based on all available information.” This standard is used by MIA hearing officers and by the Office of Administrative Hearings.

**Background:** This bill is a legislative initiative of the People’s Insurance Counsel Division (PICD) of the Office of the Attorney General. According to PICD, insurers often base their denial of homeowner’s insurance claims on the report of an expert. Although homeowners often submit additional information supporting their claim, the insurer is able to ignore this information and deny the claim based solely on the insurer’s own source of information. Elimination of the “arbitrary or capricious” standard is intended to require an insurer to consider and respond to information provided to the insurer that may contradict the expert report. In investigating claim denial complaints, MIA will need to determine whether it was reasonable for the insurer to deny a claim when there was information before the insurer that contradicted the insurer’s expert. Though intended to address homeowner’s insurance claim denials, the bill applies to all lines of insurance.

PICD evaluates medical professional liability insurance and homeowner’s insurance matters pending before the Insurance Commissioner to determine whether the interests of insurance consumers are affected. The division concentrates on review of consumer complaints filed with MIA; review of rate, rule, and form filings; participation in the legislative process to represent consumer interests; and review of “lack of good faith” complaints as required under § 27-1001 of the Insurance Article.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

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mlm/mwc

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