Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 744 (Senator Madaleno, *et al.*)
Finance Health and Government Operations

Health Insurance - Habilitative Services - Required Coverage, Workgroup, and Technical Advisory Group

This bill requires the Maryland Insurance Commissioner to establish a workgroup on access to habilitative services benefits. The Department of Health and Mental Hygiene, in consultation with the Commissioner, must establish a technical advisory group on the use of habilitative services to treat autism and autism spectrum disorders (ASDs). Beginning November 1, 2013, a determination by a carrier on whether habilitative services are medically necessary and appropriate to treat autism and ASDs must be made in accordance with regulations adopted by the Commissioner.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: The Maryland Insurance Administration and the Department of Health and Mental Hygiene can comply with the bill's requirements using existing budgeted resources.

Local Effect: None.

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

Analysis

Bill Summary: The annual notice carriers provide about habilitative services coverage must be provided *both in print and on the carrier's website*. The bill also clarifies that "congenital or genetic birth defect" includes intellectual disability, Down syndrome,

Spina bifida, hydroencephalocele, and congenital or genetic developmental disorders. Uncodified language specifies that this change is intended to *clarify* the scope of coverage rather than *expand* the coverage of habilitative services.

The technical advisory group established under the bill must be composed of individuals with expertise in treating children with autism and ASDs and seek input from the public, including parents of children with autism and ASDs and the health insurance industry. Based on the recommendations of the technical advisory group, the Commissioner must, by November 1, 2013, adopt regulations that relate to the medically necessary and appropriate use of habilitative services to treat autism and ASDs.

The workgroup established under the bill must consist of one member of the Senate; one member of the House of Delegates; specified participants from the health care, education, and health insurance industries; a parent of a child with special needs; representatives of the Maryland Developmental Disabilities Council; and relevant State entities. The workgroup must determine (1) whether children who are entitled to and would benefit from habilitative services are actually receiving those services; (2) if children are not receiving such services, the reasons why; (3) any actions needed to promote optimum use of habilitative services; and (4) the costs and benefits associated with expanding habilitative services coverage to individuals younger than age 26. The Commissioner must submit an interim report on the findings and recommendations of the workgroup to specified committees of the General Assembly by November 1, 2012, and a final report by November 1, 2013.

Current Law: Habilitative services include occupational therapy (OT), physical therapy (PT), and speech therapy for the treatment of a child with a congenital or genetic birth defect to enhance the child's ability to function. Carriers must cover habilitative services for children younger than age 19 and may do so through a managed care system. Carriers are not required to provide reimbursement for habilitative services delivered through early intervention or school services. Carriers must provide annual notice to insureds and enrollees about coverage of habilitative services. Denial of a request or payment for habilitative services on the grounds that a condition or disease is not a congenital or genetic birth defect is an adverse decision and subject to appeal.

Background: Coverage of habilitative services for children is 1 of 45 mandated health insurance benefits that certain carriers must provide to their enrollees. Every four years, the Maryland Health Care Commission (MHCC) examines the fiscal impact of mandated health insurance benefits. MHCC's January 2012 report found that the full cost of all mandated benefits accounts for total premium costs of 18.8% for group health insurance, 19.6% for individual policies, and 17.9% for the State plan. Coverage for habilitative services accounts for total premium costs of 0.1% for all types of insurance. About half

(40% to 60%) of the surveyed employers with self-funded plans provide benefits that comply fully with the habilitative services mandate.

Maryland's small group market Comprehensive Standard Health Benefit Plan (CSHBP) is not subject to mandated benefits applicable to the large group market. Rather, MHCC reviews CSHBP on an annual basis and considers making benefit or cost-sharing changes at that time. CSHBP does cover habilitative services for children younger than age 19 to treat congenital or genetic birth defects.

Although not required to follow State health insurance mandates, the State plan provides coverage for all mandated health insurance services, including habilitative services for individuals younger than age 19. All State plan enrollees are eligible to receive up to 50 visits per plan year combined for speech, OT, or PT visits. Some precertification based on medical necessity is required. Services are typically only for rehabilitative rather than habilitative purposes. Therefore, individuals in need of habilitative services must seek certification by the carrier to receive coverage under the mandate. Data regarding utilization of habilitative services by State plan enrollees appear to indicate limited usage. A total of only 428 individuals accessed habilitative services for PT/OT in fiscal 2011. Children younger than age 19 received an average of 8.1 PT/OT visits, and only 24 individuals received 50 visits per year. These data suggest that State plan enrollees are not fully accessing the habilitative services benefits that are available to them.

A January 2011 analysis of the financial impact of expanding the habilitative services mandate conducted by Mercer found that no carriers are currently providing habilitative services to individuals beyond age 18. Mercer estimated the cost impact of phasing in an expanded mandate for individuals age 19 up to those age 24 over a six-year period. To cover individuals ages 19 and 20, Mercer estimated costs of 0.18% to 0.31% of premium or $11 to $18 per policy per year.

Under federal health care reform, beginning January 1, 2014, all health plans offered through the new health benefit exchange marketplaces must include certain "essential health benefits." Essential health benefits must include items and services within at least 10 specified health categories. One such category is "rehabilitative and habilitative services and devices"; however, these terms are not specifically defined.

Under the federal Affordable Care Act, each state must pay, for every health plan purchased through the exchange, the additional premium associated with any state-mandated benefit beyond the essential health benefits. States can choose one of four benchmark plans to meet the requirement for essential health benefits: (1) one of the three largest small group plans in the state by enrollment; (2) one of the three largest state employee health benefit plans by enrollment; (3) one of the three largest federal

employee health benefit plans by enrollment; or (4) the largest insured commercial non-Medicaid health maintenance organization operating in the state. Any Maryland mandates that apply to the selected benchmark plan will apply to the essential health benefits package in 2014 and 2015. The U.S. Department of Health and Human Services advised in December 2011 that any new mandate enacted during the 2012 legislative session or beyond, or any benefits that do not apply to the benchmark plan, *will not* apply to the essential health benefits package, and thus the State will be liable for the cost of the additional premiums associated with those benefits. Legislative Services notes that this advice could be subject to change.

Additional Information

Prior Introductions: None.

Cross File: HB 1055 (Delegate A. Kelly, *et al.*) - Health and Government Operations.

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

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