

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1165 (Delegate Sample-Hughes, *et al.*)
Health and Government Operations

Health Insurance - Provider Panels - Coverage for Nonparticipating Providers

This bill requires an insurer, nonprofit health service plan, health maintenance organization (HMO), dental plan organization, and any other person that provides health benefit plans subject to State regulation (with the exception of managed care organizations) to cover mental health or substance use disorder services provided by a nonparticipating provider at no greater cost to the member than if the services were provided by a participating provider, under specified circumstances. These entities (collectively known as carriers) must also inform members and beneficiaries, in plain language, of the right to request a referral to a specialist or nonphysician specialist, and the Consumer Education and Advocacy Program must provide public education to inform consumers of that right. **The bill takes effect January 1, 2021, and applies to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after that date.**

Fiscal Summary

State Effect: Minimal special fund revenue increase for the Maryland Insurance Administration in FY 2021 from the \$125 rate and form filing fee. Review of form filings requires contractual assistance in FY 2021 only. The Consumer Education and Advocacy Program in the Office of the Attorney General can provide the required public education using existing budgeted resources.

Local Effect: The bill is not anticipated to materially affect local government finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill expands the definition of “nonphysician specialist” to include a health care provider that is licensed as a behavioral health program.

If a carrier’s provider panel has an insufficient number or type of participating specialists or nonphysician specialists with the expertise to provide covered mental health or substance use disorder services to a member within the appointment waiting time or travel distance standards established in regulations, the carrier must cover the services provided by a nonparticipating provider at no greater cost to the member than if the services were provided by a participating provider.

Carriers must inform members and beneficiaries, in plain language, of the right to request a referral to a specialist or nonphysician specialist in print and electronic plan documents and any provider directory.

Current Law: “Nonphysician specialist” means a health care provider who is (1) not a physician; (2) licensed or certified under the Health Occupations Article; and (3) certified or trained to treat or provide health care services for a specified condition or disease in a manner that is within the scope of the license or certification of the health care provider.

A health care provider may not balance bill an HMO enrollee for any portion of services provided that were not covered by the HMO. A health care provider may collect applicable HMO copayments or coinsurance from the HMO enrollee.

Each carrier must establish and implement a procedure by which a member may request a referral to a specialist or nonphysician specialist who is not part of the carrier’s provider panel (out-of-network) if the member is diagnosed with a condition or disease that requires specialized health care services or medical care. The procedure must provide for a referral if the carrier does not have a specialist or nonphysician specialist with the professional training and expertise to treat or provide health care services for the condition or disease in-network or cannot provide reasonable access to such a specialist without unreasonable delay or travel.

A carrier must treat services provided by such a specialist or nonphysician specialist as if the service were provided in-network for purposes of calculating any deductible, copayment, or coinsurance.

Maryland regulations (COMAR 31.10.44.04) require each carrier provider panel to have within the geographic area served by the carrier’s network(s), sufficient primary care physicians, specialty providers, behavioral health and substance use disorder providers, hospitals, and health care facilities to meet specified maximum travel distance standards

for each type of geographic area. Psychiatry, psychology, and licensed clinical social worker providers must be within 10, 25, or 60 miles from an enrollee's home for an urban, suburban, or rural area, respectively. Other behavioral health providers must be within 15, 40, or 90 miles. An inpatient psychiatric facility must be within 15, 45, or 75 miles. Other behavioral health/substance abuse facilities must be within 10, 25, or 60 miles.

Maryland regulations (COMAR 21.10.44.05) require each carrier provider panel to meet specified maximum waiting times for an appointment, including 72 hours for urgent care (including behavioral health and substance use disorder services) and 10 calendar days for non-urgent behavioral health and substance use disorder services.

Background: At least 10 states (Arkansas, Colorado, Illinois, Maine, Mississippi, Missouri, Nebraska, New Hampshire, South Dakota, and Washington) have enacted laws establishing that, in the event of an inadequate network of providers, a carrier must allow for a covered person to receive services from nonparticipating providers at a cost no greater than the covered person would have had to pay if he or she had received the benefit from a participating provider. Maine, Mississippi, and South Dakota allow carriers to make alternative coverage arrangements, as long as the alternative meets with the approval of that state's insurance commissioner. Nebraska requires the carrier to pay its usual and customary rate or "an agreed upon rate." New Hampshire does not require reimbursement to a nonparticipating provider who has been excluded from the carrier's network for failing to meet credentialing standards.

Small Business Effect: Small business health care practitioners or practices that are nonparticipating providers likely serve additional patients under the bill due to the reduction in cost for consumers to receive such services.

Additional Comments: The impact of the bill on health insurance premiums is unclear. While most carriers are not currently meeting at least some of the network adequacy standards for mental health and substance use disorder services, it is unclear if the cause of inadequate networks is a reflection of carrier practices or rates or a shortage of providers willing and available to join provider networks.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 484 (Senator Klausmeier) - Finance.

Information Source(s): Maryland Department of Health; Maryland Health Benefit Exchange; Maryland Insurance Administration; Department of Legislative Services

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