

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 715
(Delegate Valentino-Smith)
Health and Government Operations

**Administrative Services Organizations – Requirements for Retraction,
Repayment, or Mitigation of Claims**

This emergency bill prohibits an administrative services organization (ASO) that administered the delivery of Medicaid specialty mental health services during a specified period from retracting, requiring repayment of, or seeking mitigation of a claim unless the ASO provides the health care provider with specified information. If an ASO does not provide the information, and on the request of a provider under certain circumstances, an ASO must retain an independent auditor, as specified. The Maryland Department of Health (MDH) must immediately amend its contract with an ASO to reflect the requirements of the bill. Within 30 days of enactment of the bill, MDH must submit a report containing specified information about providers participating in the Medicaid specialty mental health system.

Fiscal Summary

State Effect: MDH can submit the required report using existing budgeted resources. Amendment of the ASO contract likely increases MDH expenditures (general and federal funds) by an indeterminate amount in FY 2022, as discussed below. To the extent the bill results in a reduction in the outstanding balance MDH receives from providers under the claims reconciliation process, MDH general expenditures increase by an indeterminate amount beginning in FY 2022, while federal fund revenues and expenditures decrease, as discussed below.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Required Information an Administrative Services Organization Must Provide

An ASO must provide a provider from which it is seeking a retraction, repayment, or mitigation with the following information:

- for every encounter, claim, and payment adjustment, a specified form (known as an 835) that is (1) delivered at the same time as the claim payment; (2) can be uploaded in a standard format; (3) contains specified denial codes; and (4) for a claim that is denied in whole or in part, identifies all reasons for the denial and the specific information necessary for the claim to be considered a clean claim;
- for all claims processed or reprocessed, a full claims history that includes links for each reprocessed claim to the original claim; the dates of each reprocessing; accurate check numbers and check dates associated with each reprocessing of a claim; and access to electronic reporting and search capacity that meets industry standards and includes recipient eligibility status, uninsured requests, and the status of all claims; and
- for each claims batch that fails or is rejected or that has not proceeded to adjudication, a specified report.

Requirement to Retain Independent Auditor

If an ASO does not provide the required information, the ASO must retain an independent auditor (at the ASO's expense) to determine, with input from affected providers, the amount owed by providers. The sole purpose of an independent auditor is to determine the amount owed by providers; an auditor may not make additional findings. If a health care provider disagrees with an auditor's findings, the provider may appeal the findings under the Administrative Procedures Act. On request of a provider, and following reasonable efforts to reach resolution, an ASO must retain an independent auditor to determine the amounts owed by the provider. An ASO may not use State funds or otherwise pass on to the State the expense for retaining an auditor.

Maryland Department of Health Report

Within 30 days after enactment of the bill, MDH must report the following information: (1) the differentials between estimated payments paid to providers in the Medicaid specialty mental health system from January 1, 2020, to August 3, 2020, inclusive, and the amount of claims submitted by providers for the dates of service during the estimated

payment period; (2) the amount of the differential attributed to service disruptions due to the COVID-19 pandemic; and (3) any plan to forgive provider balances because of service disruptions due to the COVID-19 pandemic.

Current Law:

Specialty Mental Health System

Medicaid managed care organizations (MCOs) cover mental health and substance use disorder services provided by an enrollee's primary care provider. As part of Maryland's § 1115 HealthChoice waiver, specialty mental health and substance use disorder services (services not performed as part of a primary care practitioner office visit) are "carved out" into a separate managed fee-for-service system.

In 2019, MDH switched ASOs for the specialty mental health system from Beacon to UnitedHealth Group (UHG)/Optum and instituted an estimated payment process by which providers were paid based on historic claims averages in calendar 2019 rather than actual claims from January 1, 2020, to August 3, 2020, inclusive. This prospective payment arrangement was intended to give UHG/Optum time to stabilize its system and reliably process claims. MDH directed UHG/Optum to work with providers to reconcile the estimated payment balance against actual claims submitted.

Chapters 151 and 152 of 2021 require the Insurance Commissioner to enforce clean claims provisions for an ASO that administers the Medicaid specialty mental health system and subject the ASO to (1) the requirement to pay interest on unpaid clean claims; (2) specified fines and penalties for certain violations of clean claims requirements; and (3) the Insurance Commissioner's enforcement authority in connection with any investigation or examination of potential violations of clean claims provisions.

Joint Chairmen's Report on Administrative Services Organization Functionality

The 2021 *Joint Chairmen's Report* required MDH to submit a report on ASO functionality. The report notes that UHG/Optum received nearly 17 million claims between January 2020 and November 2021 and successfully paid nearly \$3.2 billion (\$1.5 billion in calendar 2020, and \$1.7 million in calendar 2021 as of November 2021) associated with those claims to more than 2,600 providers who participate in the specialty mental health system.

Since the system went live in July 2020, providers noted a lack of 835 Health Care Claim Payment Transactions for Electronic Data Interchange (EDI) claims (835s) needed to resolve claims in their own accounting systems. As of October 2021, all missing 835s have been delivered to providers by UHG/Optum to facilitate their record keeping and reconciliation of estimated payments made between January 1, 2020, and August 3, 2020,

inclusive. Currently, 835s are automatically generated and provided on an ongoing basis for all claims.

State Fiscal Effect: The bill requires MDH to immediately amend its contract with the ASO to reflect the requirements of the bill. MDH advises that the modifications specified under the bill are not within the general scope of the contract. Thus, the amendments require consent by the vendor and approval by the Board of Public Works. Modification of the ASO contract likely results in an indeterminate increase in MDH expenditures (general and federal funds) beginning in fiscal 2022.

MDH advises that the ability to appeal claims payment under the bill may result in an increase in general fund expenditures and a reduction in federal fund revenues and expenditures beginning in fiscal 2022, as described below.

MDH based estimated payments for providers in the specialty mental health system on 2019 claims history. During the estimated payment period, many providers received more payment than actual services rendered because of the impact of the COVID-19 pandemic. For the estimated payment period, UHG/Optum received \$1.6 billion in claims that have been processed against the estimated payment total. The outstanding balance as of February 6, 2022, was \$214.5 million. The outstanding balance has been reduced over time, in part due to claims processed for dates of service during the estimated payment period being used to offset a provider's estimated payment balance. Providers generally have a year to submit claims from the date of service. Therefore, a service rendered in June 2020 may be submitted in January 2021. In this example, the payment for that claim would be used to offset the provider's outstanding estimated payment balance.

MDH advises that, if the outstanding balance of estimated payments is not recouped, MDH will have to report a deficiency to reconcile the difference in general fund expenditures and will not be able to submit and claim federal matching funds for these expenditures. Thus, to the extent that the outstanding balance recouped by MDH is reduced under the bill, general fund expenditures for claims paid to the specialty mental health system increase and federal fund revenues and expenditures decrease beginning in fiscal 2022.

The impacts discussed above are not likely to continue beyond fiscal 2023 or 2024.

The Office of Administrative Hearings may hear appeals under the bill – due to a provider's disagreement with an auditor's finding; however, the number of such appeals cannot reliably be quantified. Any such impact strains resources and occurs over a finite period of time.

Small Business Effect: Small business health care providers that participate in the Medicaid specialty mental health system may benefit from resolution of claims and retain additional payments.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 549 (Senator Augustine) - Finance.

Information Source(s): Maryland Department of Health; Maryland Insurance Administration; Office of Administrative Hearings; Department of Legislative Services

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