SB 93

Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 93 (Senator Augustine)
Finance

Health Insurance – Utilization Review – Private Review Agents

This bill requires a private review agent to (1) comply with specified criteria and standards in conducting utilization review of mental health and substance use disorder (SUD) benefits; (2) give a patient's treating health care provider the opportunity to speak about the medical necessity of the treatment request before issuing an adverse decision; and (3) explain, before issuing an adverse decision for any mental health or SUD benefits, how the applicable criteria and standards for utilization review are applied and result in an adverse decision. The bill also expands the purposes of the subtitle governing private review agents and makes technical changes. **The bill takes effect January 1, 2025.**

Fiscal Summary

State Effect: Minimal increase in special fund revenues for the Maryland Insurance Administration (MIA) in FY 2025 from the $125 rate and form filing fee. Any additional workload on MIA can likely be handled with existing budgeted resources. Expenditures for the State Employee and Retiree Health and Welfare Benefits Program (State Plan) may increase, as discussed below.

Local Effect: To the extent health insurance costs increase under the bill, health care expenditures for local governments that purchase fully insured health benefit plans may increase. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Purposes of the Subtitle Governing Private Review Agents

The bill establishes that, in addition to the purposes under current law, a purpose of the subtitle governing private review agents is to specify utilization review criteria, including criteria to be used for mental health and SUD benefits. The bill also modifies two existing purposes, which are to (1) promote the delivery of quality health care in a cost-effective manner *that ensures timely access to health care services* and (2) foster greater coordination, *communication, and transparency* between payors and providers conducting utilization review activities.

Utilization Review – Mental Health and Substance Use Disorder Benefits

The bill requires a private review agent to submit to the Insurance Commissioner in the private review agent's utilization review plan the process for confirming that the specific criteria and standards to be used in conducting utilization review of mental health and SUD benefits are compliant.

For SUD disorders, the criteria and standards must be in compliance with the most recent edition of the American Society of Addiction Medicine treatment criteria for addictive, substance-related, and co-occurring conditions that establishes guidelines for placement, continued stay and transfer or discharge of patients with addiction and co-occurring conditions.

For mental health disorders, the criteria and standards must:

- be evidence-based, peer-reviewed, consistent with generally accepted standards of care, and developed by specified entities;
- take into account the needs of atypical patient populations and diagnoses;
- ensure quality of care and access to needed health care services;
- be sufficiently flexible to allow deviations from norms when justified on a case-by-case basis;
- be age-appropriate, considering the unique needs of children, adolescents, and older adults; and
- be evaluated at least annually and updated as necessary.

For mental health and SUD benefits, a private review agent (1) must use the utilization review criteria and standards specified above for any decision related to service intensity,

level of care placement, continued stay, transfer, and discharge; (2) must make all decisions consistent with the required criteria for chronic care treatment; and (3) may not limit treatment to services for acute care treatment.

Adverse Decisions

The bill repeals existing language that gives a private review agent authority to allow a health care provider to speak to the individual that rendered an initial determination not to authorize or certify a health care service. Instead, the bill specifies that, before issuing an adverse decision, a private review agent *must* give the patient's treating physician, dentist, or other health care provider the opportunity to speak about the medical necessity of the treatment request with the physician, dentist, or panel responsible for the adverse decision.

Before issuing an adverse decision for mental health and SUD benefits, a private review agent must explain how the specific criteria and standards for utilization review are applied in the individual case and result in the adverse decision.

Current Law: There are four purposes of the subtitle governing private review agents: (1) promoting the delivery of quality health care in a cost effective manner; (2) fostering greater coordination between payors and providers conducting utilization review activities; (3) protecting patients, business, and providers by ensuring that private review agents are qualified to perform utilization review activities and to make informed decisions of the appropriateness of medical care; and (4) ensuring that private review agents maintain the confidentiality of medical records in accordance with State and federal laws.

Private Review Agents

A "private review agent" means a (1) nonhospital-affiliated person or entity performing utilization review that is either affiliated with, under contract with, or acting on behalf of a Maryland business entity or a third party that pays for, provides, or administers health care services to citizens of the State or (2) any person or entity performing utilization review for the purpose of making claims or payment decisions for health care services on behalf of the employer's or labor union's health insurance plan under an employee assistance program for employees other than the employees employed by the hospital or a business wholly owned by the hospital.

A private review agent may not conduct utilization review in the State unless the Commissioner has granted the private review agent a certificate of registration. When applying for a certificate, a private review agent must certify that the criteria and standards to be used in conducting utilization review are objective, clinically valid, compatible with established principles of health care, and flexible enough to allow deviations from norms when justified on a case-by-case basis.

A private review agent may not use criteria and standards for utilization review that do not meet these requirements. A person who knowingly uses criteria and standards to conduct utilization review that do not meet these requirements is guilty of a misdemeanor and on conviction is subject to a penalty of up to $1,000. Each day a violation is continued after the first conviction is a separate offense. In addition to that penalty, the Commissioner may impose an administrative penalty of up to $5,000 for each violation of any provision governing private review agents.

A private review agent applying for a certificate of registration must also submit specified information that the Commissioner requires, including a list of the persons involved in establishing the specific criteria and standards to be used in conducting utilization review. The Commissioner may establish reporting requirements to evaluate the effectiveness of private review agents and determine if utilization review programs are compliant with applicable State law and regulations.

Utilization Review of Mental Health and Substance Use Disorders

The same criteria and standards used in conducting utilization review for physical health conditions generally apply to utilization review of mental health and SUD. However, a private review agent must accept a uniform treatment plan form for utilization review of services for the treatment of a mental illness, emotional disorder, or SUD. A private review agent may not modify the uniform treatment plan form in any manner, nor may the private review agent require a health care provider to modify the form (except as specified) or submit additional treatment plan forms.

Adverse Decisions

Except as otherwise specified, all adverse decisions must be made by a physician or a panel of other appropriate health care service reviewers with at least one physician on the panel who is board certified or eligible in the same specialty as the treatment under review.

If a private review agent makes an initial determination not to authorize or certify a health care service and the health care provider believes the determination warrants an immediate reconsideration, the private review agent may grant the health care provider an opportunity to speak with the physician that rendered the determination. The health care provider and physician must speak within 24 hours of the provider seeking the reconsideration.

State Expenditures: The State Plan is largely self-insured for its medical contracts and, as such, except for the one fully insured integrated health model medical plan (Kaiser), is not subject to this bill. However, the program generally provides coverage as required under State law.

The Department of Budget and Management (DBM) interprets the bill as *requiring* that a private review agent conduct utilization review for any mental health or SUD service, which would increase the program's administrative costs by $2.5 to $5.0 million annually. However, the Department of Legislative Services (DLS) interprets the bill as requiring any private review agent that conducts utilization review for mental health and SUD services to use *specified criteria and standards*.

DBM does not generally use private review agents to conduct utilization review for mental health and SUD services at this time. Thus, DLS advises that, if DBM elects to comply with the bill's requirements, any impact on the program is not expected to be significant.

Small Business Effect: Small business mental health and SUD providers may experience increased demand for their services as a result of the bill's modifications to utilization review standards. However, the bill may result in higher premiums for small businesses that purchase fully insured health benefit plans.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years; however, legislation with similar provisions has been introduced. See HB 305 and SB 308 of 2023.

Designated Cross File: HB 110 (Delegate Charkoudian) - Health and Government Operations.

Information Source(s): Office of the Attorney General; Department of Budget and Management; Maryland Department of Health; Maryland Insurance Administration; Department of Legislative Services

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