

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1167 (Delegate Cox)
Health and Government Operations

Maryland Nondiscrimination in Health Care Coverage Act

This bill requires a “health care provider” or “health care institution” to ensure the provision or continuation of “life-sustaining care” if a patient, a patient’s family, or a patient’s advance directive directs the provision or opposes the withdrawal of such care that, in reasonable medical judgment, has a significant possibility of sustaining the life of the patient. The bill prohibits an “agency” from developing or using a dollars-per-quality adjusted life year or similar measure to make specified decisions and requires an agency to take specified actions when proposing or making decisions on new utilization management measures, coverage, reimbursement, or incentive programs. The bill also makes specified findings of the General Assembly and expresses the intent of the General Assembly that the Governor must develop and implement a plan to ensure patients have equal access to health care. The bill’s provisions are severable; should the constitutionality of any portion of the bill be challenged, the General Assembly is authorized to appoint one or more of its members who sponsored or cosponsored the bill to intervene as a matter of right.

Fiscal Summary

State Effect: Potential increase in expenditures (general and federal funds) for the Maryland Department of Health (MDH) beginning in FY 2022 to meet the bill’s utilization management requirements. Potential increase in Medicaid expenditures (general and federal funds) beginning in FY 2022; federal fund revenues increase accordingly. Potential minimal increase in general fund expenditures for the Maryland Commission on Civil Rights (MCCR) beginning in FY 2022. The Governor’s Office can likely develop and implement the required plan with existing budgeted resources.

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

Small Business Effect: Minimal.

Analysis

Bill Summary: “Agency” includes the State, a unit of the State, an entity established under the Maryland Constitution or State law, and an entity established by an entity established under the Maryland Constitution or State law.

“Health care institution” means any public or private organization, corporation, partnership, sole proprietorship, association, agency, network, joint venture, or other entity that is involved in providing health care services, including a hospital, clinic, medical center, ambulatory surgical center, private physician’s office, nursing home, or any other facility or location where health care services are provided to an individual.

“Health care provider” means an individual who is licensed, certified, or otherwise authorized by State law to practice a health care occupation or who administers health care in the ordinary course of business.

“Life-sustaining care” means health care, including mechanical ventilation, renal dialysis, chemotherapy, antibiotics, and nutrition and hydration that, in reasonable medical judgment, has a significant possibility of sustaining the life of the patient.

“Utilization management” includes step therapy, prior authorization restrictions, and the use of formulary restrictions to restrict access to a drug or other health care service prescribed by a health care provider.

Life-sustaining Care

A health care provider or health care institution that is unwilling to provide directed life-sustaining care may transfer a patient to another health care provider or institution that is both capable of and willing to provide the directed life-sustaining care. Any transfer of a patient must happen promptly on the agreement by the receiving health care provider or institution to admit the patient. Until an agreed-upon transfer occurs, the original health care provider or institution must ensure the continued provision of the directed life-sustaining care.

Dollars-per-quality Adjusted Life Year and Utilization Management

An agency may not (1) develop or use a dollars-per-quality adjusted life year or similar measure that discounts the value of a life based on an individual’s disability, including age or chronic illness, as a threshold to establish what type of health care is cost-effective or recommended or (2) use a dollars-per-quality adjusted life year or similar measure as a threshold to make coverage, reimbursement, incentive program, or utilization management decisions, whether the decisions are by the agency or from a third party.

Each agency proposing new utilization management measures must post for public comment both the proposed measure and the rationale for the proposed measure, as specified. In addition, each agency making decisions on utilization management measures, coverage, reimbursement, or incentive programs must (1) consult with representatives from specified organizations and (2) ensure that a process is in place to ensure robust stakeholder engagement and full transparency regarding the provision of any research and analysis relied on for decision making that would impact access to health care treatment and services by specified patient groups. Each agency must, among other actions, prepare a specified annual report on access to health care treatments and services that assesses the impact of any form of utilization management on access to care, and that provides for public comment, is posted on MDH's website, and is submitted to the General Assembly.

Governor's Plan Requirements

The Governor's plan must facilitate the appropriate State departments, agencies, and licensing authorities in regulating health care providers and payors licensed or otherwise participating in the State, for the purpose of ensuring patients equal access to health care, especially during a time of medical scarcity or shortage.

Current Law: Chapter 428 of 2020 states that it is the policy of the State to (1) provide affordable health care throughout the State to all regardless of race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, or disability and (2) prohibit discrimination with respect to the provision of health care by any person, in order to protect and ensure the peace, health, safety, prosperity, and general welfare of all.

Accordingly, a hospital, a related institution, and a person licensed or otherwise regulated by MDH or a unit in MDH is prohibited from discriminating against any person because of the person's race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, or disability. MCCR has concurrent jurisdiction with the Secretary of Health or a unit of MDH over alleged discrimination on the basis of race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, or disability.

State Fiscal Effect:

Maryland Department of Health

MDH advises that, to the extent that the bill's requirements regarding the provision of life-sustaining care increase the amount of health care services provided to Medicaid enrollees compared with what may have been provided in the absence of the bill, Medicaid expenditures (general and federal funds) increase by an indeterminate amount beginning

in fiscal 2022. Actual expenditures cannot be reliably estimated but are assumed to be minimal. Federal fund matching revenues increase accordingly.

The Maryland Board of Nursing (BON) advises that the bill has a significant impact on BON investigations for noncompliance with the bill's provisions related to the continuation of life-sustaining care, including the need to hire additional staff. The Department of Legislative Services (DLS) agrees that, to the extent the bill results in an increase in complaints against individuals licensed by BON, BON investigations may increase. However, without actual experience under the bill, hiring additional personnel is premature. To the extent that additional investigations are necessary, BON special fund expenditures may increase.

The Maryland Board of Physicians (MBP) advises that the bill will have no fiscal or operational impact on MBP. MDH further advises that the bill will have no impact on the expenditures of the other health occupations boards.

The bill requires each agency to (1) post any new proposed utilization management measure and the rationale for the proposed measure for public comment; (2) consult with representatives from specified organizations; and (3) ensure that a process is in place to ensure robust stakeholder engagement and full transparency regarding the provision of any research and analysis relied on for decision making that would impact access to health care treatment and services by specified patient groups. In particular, each agency must prepare an annual report on access to health care treatments and services that assesses the impact of any form of utilization management on access to care, with a specific analysis of the impact on individuals with disabilities, chronic illness, and advanced age. The report must provide for public comment, be posted on MDH's website, and be submitted to the General Assembly. DLS advises that this likely imposes additional costs on several MDH administrations, including Medicaid, the Behavioral Health Administration, and the Developmental Disabilities Administration. Thus, MDH expenditures (general and federal funds) may increase by an indeterminate amount beginning in fiscal 2022 to meet these requirements.

Maryland Commission on Civil Rights

Pursuant to Chapter 428 of 2020, which took effect October 1, 2020, MCCR has concurrent jurisdiction with MDH to investigate claims of unlawful discrimination in health care access and coverage. However, since October 1, 2020, MCCR has not been forwarded any complaints from MDH. To the extent that the bill results in an increase in complaints being filed, general fund expenditures for MCCR increase. However, based on the current level of discrimination in health care, any increase is expected to be minimal.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Commission on Civil Rights; Maryland Department of Disabilities; Maryland Department of Health; Department of Legislative Services

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