

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 638

(Senator Augustine, *et al.*)

Finance

Health and Government Operations

Maryland Insurance Commissioner - Specialty Mental Health Services and
Payment of Claims - Enforcement

This emergency bill requires the Maryland Insurance Commissioner to enforce a provision of law that specifies that § 15-1005 of the Insurance Article (which governs clean claims) applies to the delivery system for specialty mental health services established for Medicaid managed care organization (MCO) enrollees and administered by an administrative services organization (ASO). The bill also specifically subjects an ASO that administers the specialty mental health system to (1) the requirement to pay interest on unpaid clean claims; (2) specified current law 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. The bill specifies certain actions the Insurance Commissioner must take related to complaint investigations, examinations, and imposition of interest and penalties relating to an ASO. If the Insurance Commissioner conducts an examination of an ASO, the ASO may not use State funds or pass on to the State any expenses related to the examination. **The bill terminates two years from the date of enactment.**

Fiscal Summary

State Effect: The Maryland Insurance Administration (MIA) can likely enforce clean claims provisions as required under the bill using existing budgeted resources. MIA special fund revenues increase by an indeterminate amount in FY 2021 through 2023 to the extent fines are assessed.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: If the Insurance Commissioner determines that an ASO will use State funds or otherwise pass on the cost of any interest or penalty to the State, the Commissioner may not require payment of interest or impose a fine or penalty on the ASO. If the Insurance Commissioner investigates a complaint that an ASO violated clean claims requirements, any findings must be provided to the Maryland Department of Health (MDH). If the Insurance Commissioner conducts an examination of an ASO, the Commissioner must submit the examination report to specified committees of the General Assembly.

Current Law:

Specialty Mental Health System

Medicaid 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.

Under § 15-103(b)(21) of the Health-General Article, MDH must establish a delivery system for specialty mental health services for MCO enrollees. The provisions of § 15-1005 of the Insurance Article (clean claims requirements) apply to the delivery system administered by an ASO. However, the provisions are enforced by MDH and not subject to the jurisdiction of MIA and the Insurance Commissioner. For other claims paid by MCOs under HealthChoice, MIA and the Insurance Commissioner are responsible for evaluating and determining the application of clean claims requirements.

Clean Claims Requirements

Under § 15-1005 of the Insurance Article, within 30 days of receipt of a claim for reimbursement, an insurer, nonprofit health service plan, or health maintenance organization (collectively known as carriers) must pay a clean claim or send a notice of receipt with the status of the claim. If a carrier disputes a portion of a claim, it must provide payment for any undisputed portion within 30 days of receipt of the claim. If a carrier requests specific additional information necessary for the claim to be considered clean, the carrier must pay the claim within 30 days after receipt of the requested information.

A carrier that does not pay a clean claim (or violates any other related requirements) must pay interest on the amount of the claim that remains unpaid 30 days after the claim is received at a monthly rate of 1.5% from the 31st day through the 60th day, 2% from the 61st day through the 120th day, and 2.5% after the 120th day.

A carrier that violates these provisions is subject to a fine of up to \$500 for each violation that is arbitrary and capricious, based on all available information, and the penalties prescribed under § 4-113 of the Insurance Article, which authorizes the Insurance Commissioner to suspend or revoke a certificate of authority, or to impose monetary penalties in lieu of suspension or revocation.

Title 2, Subtitle 2 of the Insurance Article provides for the enforcement authority of the Insurance Commissioner, including authority to examine the accounts, records, documents, and transactions that relate to the insurance affairs or proposed insurance affairs of specified entities; it also establishes requirements relating to the conduct of examinations, hearings, issuance of orders, and judicial review.

State Fiscal Effect: MDH is currently responsible for enforcing the ASO's compliance with § 15-1005 of the Insurance Article. Under the bill, this responsibility transfers to the Insurance Commissioner, but only for two years. Thus, MIA's workload increases by an indeterminate amount in fiscal 2021 through 2023 to investigate complaints and conduct market conduct exams of the ASO to determine compliance with § 15-1005 of the Insurance Article. MIA advises that any additional workload can likely be handled with existing budgeted resources. Any operational or fiscal savings to MDH are assumed to be minimal.

As the bill subjects an ASO that administers the specialty mental health system to existing fines and penalties for specified violations of clean claims provisions, MIA special fund revenues increase by an indeterminate amount, beginning as early as fiscal 2021 and through fiscal 2023, to the extent such fines are assessed.

Additional Comments: MDH recently switched ASOs for the specialty mental health system from Beacon to 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. This prospective payment arrangement was intended to give Optum time to stabilize its system and reliably process claims. MDH directed Optum to work with providers to reconcile the estimated payment balance against actual claims submitted. Estimated payments were \$1.0 billion to providers, and an estimated \$300.0 million remains to be reconciled. MDH has received a request from three providers to apply the clean claims requirements of § 15-1005 of the Insurance Article, but due to the provision of estimated payments, MDH only plans to evaluate claims under these provisions that were submitted for billing and dates of service after August 3, 2020.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 919 (Delegate Bagnall) - Health and Government Operations.

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

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