

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 180

(Chair, Finance Committee)(By Request - Departmental -
Maryland Insurance Administration)

Finance

Health and Government Operations

**Insurance - Conformity With Federal Law - The No Surprises Act and Other
Provisions of the Consolidated Appropriations Act, 2021**

This emergency departmental bill authorizes the Maryland Insurance Administration (MIA) to enforce provisions of the No Surprises Act (NSA) and other provisions of the federal Consolidated Appropriations Act, 2021. The bill specifies that NSA and certain provisions of the Consolidated Appropriations Act, 2021 regarding transparency apply to all insurers, nonprofit health service plans, and health maintenance organizations (HMOs) that deliver or issue for delivery in the State policies or contracts for a health benefit plan or blanket health insurance. Specified provisions of the Consolidated Appropriations Act, 2021 regarding transparency also apply to carriers that deliver or issue for delivery short-term limited duration insurance. The Insurance Commissioner may enforce the bill under any applicable provisions of the Insurance Article.

Fiscal Summary

State Effect: Any change in State activities does not materially affect State finances.

Local Effect: None.

Small Business Effect: MIA has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law/Background:

The Federal Consolidated Appropriations Act, 2021

Division BB, Title I: NSA, enacted as Division BB, Title 1 of the federal Consolidated Appropriations Act, 2021, establishes comprehensive consumer protections related to balance billing by health care providers for emergency services and for certain services performed by out-of-network (OON) providers at in-network facilities. NSA is intended to protect consumers from surprise medical bills by requiring carriers to cover OON claims and apply in-network cost sharing, and by prohibiting providers from billing patients more than the in-network cost-sharing amount for surprise medical bills. An exception is allowed for certain services if patients give prior written consent to be billed more by OON providers. NSA also establishes a process for determining the payment amount for surprise, OON medical bills, starting with negotiations between carriers and providers and, if necessary, an independent dispute resolution process. Of note, NSA grants explicit authority to states to enforce provisions of the Act on air ambulance providers (states previously could not address air ambulance billing due to a prohibition on regulating air carriers under the federal Airline Deregulation Act).

Most major provisions of NSA took effect January 1, 2022, and apply to fully insured plans and self-funded plans (including grandfathered plans). Protections do not extend to short-term limited duration plans or excepted benefits such as dental and vision.

The federal government has exclusive enforcement responsibility for NSA for most private health plans. States will lead enforcement for state-regulated plans. NSA includes flexibility to accommodate states that have their own balance billing laws and those with an All-Payer Model Agreement (including Maryland's Total Cost of Care Model (TCOC)).

Division BB, Title II: Division BB, Title II of the federal Consolidated Appropriations Act, 2021 includes additional provisions regarding transparency. Section 201 includes provisions regarding increasing transparency by removing gag clauses on price and quality information. Section 202 addresses disclosure of direct and indirect compensation for brokers and consultants to employer-sponsored health plans and enrollees in plans on the individual market, and disclosures to enrollees of individual market coverage. Section 203 deals with strengthening parity in mental health and substance use disorder benefits. While NSA does not apply to short-term duration plans, the transparency provisions under §§ 202 and 203 do apply to such plans.

Existing Protections in Maryland Law Prior to the No Surprises Act

Maryland is one of several states that had some consumer protections in place with respect to balance billing prior to passage of NSA, specifically provisions relating to HMO enrollees, preferred provider insurance policies (PPOs), and assignment of benefits (AOB).

HMO enrollees may not be held liable to any health care provider (except for deductibles, coinsurance, and copayments) for covered services provided, which generally include emergency services and other services provided at an in-network facility and under the direction of an in-network physician. This applies to both providers who are contracted with the HMO and noncontracted providers when the service is obtained in accordance with the terms of the contract, obtained pursuant to a referral, or preauthorized or otherwise approved by the HMO. State law provides a formula establishing payment standards that an HMO must follow to reimburse noncontracted providers.

PPOs must provide for payment of services rendered by nonpreferred providers. Generally, the difference between the coinsurance percentage applicable to nonpreferred providers and preferred providers may not be greater than 20 percentage points. An insurer's allowed amount for a service provided by nonpreferred providers under a PPO may not be less than the amount paid to similarly licensed preferred providers for the same health care service in the same geographic region. A PPO may not restrict payment for covered services provided by nonpreferred providers for emergency services; an unforeseen illness, injury, or condition requiring immediate care; or specialty care (when an in-network specialist is unavailable).

For other types of physician services, protections against balance billing depend on whether the physician has accepted an AOB. If the patient and a hospital-based physician or an on-call physician agree to an AOB, then the insurer pays the physician directly in accordance with a formula established under State law and the patient cannot be balance billed.

OON providers other than hospital-based or on-call physicians may balance bill unless they (1) accept an AOB and (2) fail to provide a required notice. If an AOB is not accepted by an OON provider, or if an AOB is accepted and the required notice is provided, then the patient remains responsible for the balance billing amount.

Maryland's Total Cost of Care Model

In calendar 2019, Maryland entered a new TCOC Model designed to (1) improve population health; (2) improve care outcomes for individuals; and (3) control growth in the total cost of care for Medicare beneficiaries. To accomplish these goals, the model is designed to move beyond hospitals to address Medicare patients' care in the community.

TCOC will continue for 10 years, provided the State meets the requirements of the agreement.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of Budget and Management; Maryland Insurance Administration; Department of Legislative Services

Fiscal Note History: First Reader - January 17, 2022
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Insurance – Conformity With Federal Law – The No Surprises Act and Other Provisions of the Consolidated Appropriations Act, 2021

BILL NUMBER: SB 180

PREPARED BY: Maryland Insurance Administration

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

 WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

There is no economic impact on small businesses associated with this proposal.