

Department of Legislative Services  
Maryland General Assembly  
2025 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 1069

(Delegate Woorman, *et al.*)

Health and Government Operations

Finance

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Life and Health Insurance Policies and Annuity and Health Maintenance  
Organization Contracts - Discretionary Clauses - Prohibition

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This bill prohibits insurers, nonprofit health service plans, and health maintenance organizations (collectively known as carriers) from selling, delivering, or issuing a health insurance policy, a life insurance policy, an annuity contract, or a health maintenance organization contract that contains a clause that purports to reserve sole discretion to the carrier to interpret the terms of the policy, or to provide standards of interpretation or review that are inconsistent with the laws of the State. **The bill applies to all policies, contracts, and health benefit plans sold, delivered, issued, or renewed in the State on or after January 1, 2026.**

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Fiscal Summary

**State Effect:** Minimal special fund revenue increase for the Maryland Insurance Administration (MIA) in FY 2026 from the \$125 rate and form filing fee. The bill's requirements can be handled by MIA with existing budgeted resources.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law:** Chapter 155 of 2011 prohibits insurers and nonprofit health service plans from selling, delivering, or issuing a disability insurance policy that contains a clause that purports to reserve sole discretion to the carrier to interpret the terms of the policy, or to provide standards of interpretation or review that are inconsistent with the laws of the State.

Discretionary clauses in insurance contracts generally give the insurance carrier full discretion to determine when insurance benefits are due.

As stated by the U.S. Supreme Court in *Firestone Tire v. Bruch* (1989), under the federal Employee Retirement Income Security Act of 1974, insureds who believe they have been wrongfully denied benefits may sue in federal court. The court determines the standard of review by checking for the presence of a discretionary clause. Such a clause might read: “Insurer has full discretion and authority to determine the benefits and amounts payable and to construe and interpret all terms and provisions of the plan.” If an insurance contract has a discretionary clause, the decisions of the insurance company are reviewed under an “abuse of discretion” standard. Absent a discretionary clause, review is *de novo*.

Under the *de novo* standard, a court may consider all available evidence and issue a decision based on its own judgment, which gives claimants a better chance of receiving the benefits in their policies. An “abuse of discretion” standard limits the court to only issuing a ruling different from the carrier’s decision if the carrier’s decision is found to have been unreasonable and an abuse of discretion.

**Additional Comments:** The National Association of Insurance Commissioners has advocated prohibition of discretionary clauses in life, health, annuity, and disability insurance contracts by promulgating a model law intended to help ensure that health insurance benefits and disability-income protection coverage are contractually guaranteed and avoid the conflict of interest that occurs when the carrier responsible for providing benefits has discretionary authority to decide what benefits are due.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

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

**Fiscal Note History:**  
rh/ljm

First Reader - February 27, 2025

Third Reader - March 21, 2025

Revised - Amendment(s) - March 21, 2025

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Analysis by: Jennifer B. Chasse

Direct Inquiries to:

(410) 946-5510

(301) 970-5510