

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 960
Finance

(Senator Pugh)

Insurance - Unfair Claim Settlement Practices - Refusal to Pay a Claim

This bill alters the circumstances under which failure to pay a claim is an unfair claim settlement practice by an insurer, nonprofit health service plan, or health maintenance organization to include *unreasonably* refusing to pay a claim based on all available information *from the insured or any other source*.

Fiscal Summary

State Effect: The bill does not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: It is an unfair claim settlement practice for an insurer, nonprofit health service plan, or health maintenance organization to, among other things, refuse to pay a claim for an arbitrary or capricious reason based on all available information.

If the Maryland Insurance Administration (MIA) determines that an unfair claim settlement practice provision has been violated, it may order restitution of up to the amount of actual damages, subject to the policy's limits. MIA may impose a penalty of up to \$2,500 for each violation of the unfair claim settlement practices provisions and issue a cease and desist order.

The term “arbitrary and capricious” as applied by MIA has been recognized by the Court of Appeals in *Berkshire Life Ins. Co. v. Maryland Ins. Admin.*, 142 Md. App. 628, 672 (2002), as authorizing an insurer to “properly deny a claim if the insurer has an otherwise lawful principle or standard which it applies across the board to all claimants and pursuant to which the insurer has acted reasonably or rationally based on all available information.” This standard is used by MIA hearing officers and by the Office of Administrative Hearings.

Background: According to the People’s Insurance Counsel Division of the Office of the Attorney General, insurers often base their denial of homeowner’s insurance claims on the report of an expert. Although homeowners often submit additional information supporting their claim, the insurer is able to ignore this information and deny the claim based solely on the insurer’s own source of information. Elimination of the “arbitrary or capricious” standard is intended to require an insurer to consider and respond to information provided to the insurer that may contradict the expert report. In investigating claim denial complaints, MIA will need to determine whether it was reasonable for the insurer to deny a claim when there was information before the insurer that contradicted the insurer’s expert. Though intended to address homeowner’s insurance claim denials, the bill applies to all lines of insurance.

Additional Information

Prior Introductions: HB 762 of 2011 received an unfavorable report from the House Economic Matters Committee.

Cross File: HB 861 (Delegate Braveboy) - Economic Matters.

Information Source(s): Office of the Attorney General, Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

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