SPONSOR: Sen. S. McBride & Rep. Harris & Rep. Dorsey Walker
Sens. Gay, Hoffner, Pinkney, Sturgeon; Rep. Morrison

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 220

AN ACT TO AMEND TITLE 18 RELATING TO HEALTH INSURANCE FOR CHILDREN AND PERSONS ON MEDICAID.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 40, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4003. Health insurance for persons on Medicaid.

(a) No health insurer, in enrolling an individual or in making any payments for benefits to the individual or on the individual's behalf, shall take into account that the individual is eligible for or is provided medical assistance under a Medicaid Plan of this State or any other state.

(b) Where a state agency has been assigned the rights of an individual eligible for medical assistance under Title XIX of the federal Social Security Act [42 U.S.C. § 1396 et seq.] and such individual is covered for health benefits from a health insurer, no such health insurer shall impose requirements on the state agency that are different from requirements applicable to an agent or assignee of any other individual so covered.

(c) Where a state agency has been assigned the rights of an individual eligible for medical assistance under Title XIX of the federal Social Security Act [42 U.S.C. § 1396 et seq.] and such individual is covered for health benefits from a health insurer, such health insurer, or other liable third party, must accept authorization provided by the state that the item or service is covered under the state plan (or waiver of such plan) for such individual, as if such authorization was made by the third party prior to the item or service for such item or service.

SYNOPSIS

Medicaid is generally the "payer of last resort," meaning that Medicaid only pays claims for covered items and services if there are no other liable third-party payers for the same items and services. When Medicaid beneficiaries have one or more additional sources of coverage for health care services, third-party liability (TPL) rules govern the legal obligation of such third parties. Section 1902(a)(25)(A) of the Social Security Act defines third-party payers as health insurers, managed care organizations, and group health plans, among others.

The federal Consolidated Appropriations Act of 2022 (CAA 2022), enacted March 15, 2022, increased state flexibility with respect to TPL. Section 202 of the CAA, 2022 amended section 1902(a)(25)(I) of the Act to require a state plan for medical assistance to provide assurances satisfactory to the Secretary that the state has state laws in place that bar responsible third-party payers (other than Medicare plans) from refusing payment for an item or service solely on the basis that such item or service did not receive prior authorization under the third-party payer's rules. Specifically, if the responsible third party requires prior authorization for an item or service furnished to a Medicaid-eligible individual, the responsible third party must accept the authorization provided by the state that the item or service is covered under the state

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plan (or waiver of such plan) for such individual, as if such authorization was made by the third party for such item or service. Authorization by the state means that the item or service an individual received (and for which third-party reimbursement is being sought) is a covered service or item under the Medicaid state plan (or waiver of such plan) for that individual. The effective date for this new federal provision is January 1, 2024, with an exception for states that first need to pass state legislation to comply with the change in law.

This bill is intended to update the provisions of Title 18, § 4003 to make them consistent with federal law contained in the Consolidated Appropriations Act of 2022.

Author: Senator S. McBride