

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1069 (Delegates Woorman and Kaufman)
Health and Government Operations

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

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, or an annuity 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.**

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.

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.

Although the bill adds health maintenance organizations to the other types of carriers that may not sell, deliver, or issue a disability insurance policy with a discretionary clause, that provision has no effect as health maintenance organizations do not sell such policies.

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

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km/ljm

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