

MARTIN O'MALLEY  
Governor

ANTHONY G. BROWN  
Lt. Governor



BETH SAMMIS, Ph.D.  
Acting Commissioner

KAREN STAKEM HORNIG  
Deputy Commissioner

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202  
Direct Dial: 410-468-2090 Fax: 410-468-2020  
Email: bsammis@mdinsurance.state.md.us  
1-800-492-6116 TTY: 1-800-735-2258  
www.mdinsurance.state.md.us

January 25, 2010

The Honorable Thomas McClain Middleton  
Chair, Senate Finance Committee  
Miller Senate Office Building, 3 East Wing  
11 Bladen Street  
Annapolis, MD 21401-1991

The Honorable Peter A. Hammen  
Chair, House Health and Government Operations Committee  
Lowe House Office Building, Room 161  
84 College Avenue  
Annapolis, MD 21401-1991

RE: Report required by Section 3, Chapter 486, Acts of 2004

Dear Senator Middleton and Delegate Hammen:

Chapter 486, Acts of 2004, established a Task Force to Study Utilization Review of the Surgical Treatment of Morbid Obesity and required the Insurance Administration to report on:

1. The number of complaints filed with the Administration relating to the denial of coverage for the surgical treatment of morbid obesity;
2. The health insurance carrier that denied coverage and the reason given for the denial; and
3. Whether the Administration upheld or reversed the denial of coverage and the basis of the decision.

In 2005, the General Assembly modified the mandated benefit to require coverage for the surgical treatment of morbid obesity that is recognized by the National Institutes of Health as effective for the long-term reversal of morbid obesity and consistent with guidelines approved by the National Institutes of Health. The modification to the mandate in 2005 did not repeal the Maryland Insurance Administration's (MIA) annual reporting requirement.

Following the amendment to the mandated benefit in 2005, the MIA promulgated regulations limiting the criteria an insurer, nonprofit health service plan or health maintenance organization (collectively "carrier") and private review agents acting on behalf of a carrier may use when determining if the surgical treatment of morbid obesity is medically necessary. Specifically, carriers and private review agents:

- Must consider a member to meet the body mass index criterion if the member has a body mass index greater than 40 kilograms per meter squared or, if the member has a comorbid medical condition, equal to or greater than 35 kilograms per meter squared;<sup>1</sup>
- May limit the surgical treatment of morbid obesity to members over the age of 18;
- May require a member to complete a psychological examination; and
- May require a member to complete a structured diet program and must recognize commonly available diet programs, such as Weight Watchers or Jenny Craig, to be structured diet programs.

The results for the period December 1, 2008 through November 30, 2009 are discussed below.

The attached chart lists all the complaints the MIA received during the period December 1, 2008 through November 30, 2009 regarding the surgical treatment of morbid obesity. The MIA received a total of only six complaints regarding the surgical treatment of morbid obesity during this 12-month period. Of these complaints, the MIA only had jurisdiction over three. Those exempt from MIA jurisdiction included employer self-funded plans and an out-of-state group employer plan.

For the remaining three complaints, only one individual was covered under a contract subject to the surgical treatment of morbid obesity mandate at the time the complaint was received. Prior to July 1, 2009, individuals covered under small employer contracts were not subject to this mandate. However, the Maryland Health Care Commission revised the regulations applicable to the small employer contracts July 1, 2009, to make these contracts subject to the mandate.

In the one complaint that was subject to the mandate, the carrier agreed to approve the surgical treatment of morbid obesity during the MIA's complaint investigation.

Given the changes since 2005, the MIA respectfully suggests there is no specific policy reason to report on the outcome of complaints for the surgical treatment of morbid obesity. These complaints results from adverse decisions and are included in the overall statistics for adverse decisions, grievance decisions and complaints disclosed in the MIA's Annual Appeals and Grievances Report. For this reason, the MIA requests the General Assembly repeal this specific reporting requirement.

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<sup>1</sup> A member has a comorbid medical condition if he or she was been diagnosed with hypertension, a cardiopulmonary condition, sleep apnea, diabetes or any life threatening or serious medical condition that is weight induced.

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Should you have any questions about the information reported, please contact Mr. Louis S. Butler, Jr., Chief, Appeals & Grievance at 410-468-2271.

Respectfully submitted,



Beth Sammis, Ph.D.  
Acting Commissioner

Attachment

cc: Linda Stahr, Committee Staff, House Health & Government Operations  
Marie L. Grant, Committee Staff, Senate Finance Committee  
Sarah T. Albert, Department of Legislative Services  
Brenda Wilson, Associate Commissioner  
Louis Butler, Chief, Appeals and Grievance

## Morbid Obesity Report

December 1, 2008 – November 30, 2009

Case#	Date Entered	Carrier	Primary Reason of Denial by Carrier	Disposition by MIA	Basis for MIA Disposition
16223-A-2009-SLC-C	1-29-09	CareFirst of Maryland, Inc.	The services were considered not to be medically necessary.	Carrier Reversed Itself During the course of the investigation	The approval was based on additional information provided and further research into the specific details concerning the adverse decision.
16385-A-2009-LMM-C	3-24-09	Aetna Health Inc.	The services were considered not to be medically necessary.	No Jurisdiction/District of Columbia	The Maryland Insurance Administration did not have jurisdiction over the contract in question.
16490-A-2009-SLC-C	5-5-09	Group Hospitalization and Medical Services, Inc.	Gastric bypass excluded under the small group contract.	Upheld Carrier	The complainant is covered under a small group contract that is not required to cover surgical treatment of morbid obesity.
16692-A-2009-MM-C	7-24-09	CareFirst of Maryland, Inc.	Not meeting criteria in that patient's BMI did not exceed 50.	No Jurisdiction/Self-Funded Employer Plan	The Maryland Insurance Administration did not have jurisdiction over the contract in question.
16921-A-2009-GFP-C	10-30-09	UnitedHealthcare Insurance Company	Issue involved the approval of a lap band procedure and the subsequent retraction of such approval by the carrier.	No Jurisdiction/Self-Funded Employer Plan	The Maryland Insurance Administration did not have jurisdiction over the contract in question. <b>However, the MIA was able to secure approval for the surgery after discussing the matter with the carrier.</b>
16932-A-2009-LMM-C	11-3-09	Maryland Health Insurance Plan/CareFirst of Maryland, Inc.	Gastric bypass excluded under the member's contract.	Upheld Carrier	The complainant is covered under a contract that excludes coverage for obesity, medical, surgical and pharmacological treatment or regimen for reducing or controlling weight.