

Department of Legislative Services  
Maryland General Assembly  
2015 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 420

(Senator Lee)

Judicial Proceedings

Rules and Executive Nominations

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**Estates and Trusts - Funeral Expenses Allowance - Modified Administration**

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This bill increases the maximum allowance for funeral expenses that can be paid from all estates from \$10,000 to \$15,000. The bill specifies that an allowance for funeral expenses by a court is not required if (1) the estate is solvent; (2) the estate is under modified administration; and (3) the personal representative includes funeral expenses on the final report required under modified administration.

The bill applies only prospectively.

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**Fiscal Summary**

**State Effect:** General fund revenues decrease to the extent that the personal representative must pay increased funeral expenses rather than State taxes owed by the decedent. The Department of Mental Health and Hygiene's (DHMH) general and federal fund revenues decrease to the extent that less estate funds are available for Medicaid reimbursement claims against the estate of a deceased Medicaid recipient due to increased funeral expenses. Expenditures are not affected.

**Local Effect:** Local revenues decrease to the extent that the personal representative must pay increased funeral expenses rather than local taxes owed by the decedent.

**Small Business Effect:** Potential meaningful.

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## Analysis

### Current Law:

#### *Funeral Expenses*

A personal representative must pay the funeral expenses of the decedent within six months of appointment. If the total assets of the decedent are insufficient to pay all claims against the estate in full, the personal representative must make payment in the following order:

1. fees due to the register of wills;
2. costs and expenses of estate administration;
3. funeral expenses;
4. compensation of personal representatives and commissions of licensed real estate brokers;
5. family allowance;
6. taxes due by the decedent;
7. reasonable medical, hospital, and nursing expenses of the last illness of the decedent;
8. rent payable by the decedent for not more than three months in arrears;
9. wages, salaries, or commission for services performed for the decedent within three months prior to the death of the decedent;
10. assistance paid under the Public Assistance to Adults Program; and
11. all other claims.

Funeral expenses include the costs of a funeral, a burial, a cremation, a disposition of the decedent's remains, a memorial, a memorial service, food and beverage related to bringing together the decedent's family and friends for a wake or prefuneral or postfuneral gathering or meal, and any other reasonable expenses authorized by the decedent's will.

Funeral expenses may be paid from the assets of an estate in the discretion of the court according to the condition and circumstances of the decedent. Unless a special court order has been obtained, the allowance for funeral expenses may not exceed \$10,000 for small and regular estates. An allowance by the court is not required if the estate is solvent and the will specifically empowers the personal representative to pay the expenses without a court order.

An estate may be administered as a small estate if the decedent's estate, as of the date of death of the decedent, had a value of \$50,000 or less, or, if the surviving spouse is the sole legatee or heir and the decedent's estate, had a value of \$100,000 or less.

### *Modified Administration*

Modified administration accelerates the probate process by requiring the personal representative to file a verified final report no later than 10 months from the date of appointment instead of filing a formal inventory and account as would be required under regular administration. Modified administration requires fewer and less extensive filings and can be significantly less costly and burdensome for an estate. A final report must include, among other things, an itemized schedule of liens, debts, taxes, and funeral expenses of the decedent and administration expenses of the estate.

An election for modified administration may be filed by a personal representative of an estate within three months from the date of appointment of the personal representative if specified criteria are met. A modified administration must be revoked under specified circumstances.

### *Medicaid Recovery*

Under specified circumstances, DHMH may file a claim against the estate of a deceased Medicaid recipient for the medical services it provided the recipient. Medicaid is treated as “all other claims” or as a general creditor. Claims of general creditors are the lowest priority among those for which a personal representative must make payment if the total assets of the decedent are insufficient to pay all claims against the estate in full.

**Background:** Chapters 226 and 227 of 2012 increased the maximum amount that a court may allow for funeral expenses paid from a small estate from \$5,000 to \$10,000. The Acts also specified expenses that are included within the definition of “funeral expenses” under provisions of the Estates and Trusts Article governing the payment of funeral expenses of a decedent from the assets of the decedent’s estate. Chapters 62 and 63 of 2012 increased the eligibility thresholds for small estate administration from \$30,000 to \$50,000, for estates in general, and from \$50,000 to \$100,000, for an estate for which the surviving spouse is the sole legatee or heir of the decedent.

**Small Business Effect:** Small businesses associated with funeral services may benefit from the bill to the extent that more expensive funeral services are purchased; however, small businesses with claims that have lesser priority than claims related to funeral expenses may see an adverse impact. Businesses that may see an adverse impact include, but are not limited to: attorneys, real estate brokers, health care practitioners, nursing homes, landlords, and contractors.

**Additional Information:** DHMH advises that, unlike recoveries from subrogation claims that are considered special fund revenues, recoveries from liens against the estate of a

deceased Medicaid recipient for the medical services provided to the recipient are, depending on the circumstances, considered general and/or federal fund revenues.

The Department of Human Resources advises that it does not file claims for recovery against the estate of a decedent who received assistance paid under the Public Assistance to Adults Program.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None designated. However, HB 624 (Delegate Miele, *et al.*) – Health and Government Operations) is identical.

**Information Source(s):** Department of Human Resources, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Register of Wills, Department of Legislative Services

**Fiscal Note History:** First Reader - March 5, 2015  
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