Department of Legislative Services

Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 216 (Senator Kelley, *et al.*)
Finance Health and Government Operations

Maryland Medical Assistance Program - Guardianship Commissions and Fees - Income Deduction

This bill requires that, when determining the "available income" of a Medicaid recipient who is a disabled person and has a guardian, the Department of Health and Mental Hygiene (DHMH) must deduct as a remedial service any guardianship commissions and attorney's fees incurred by the recipient for guardianship services. Deductions for guardianship commissions and attorney's fees must be $50 per month.

Fiscal Summary

State Effect: Medicaid expenditures (50% general funds, 50% federal funds) increase by an estimated $1.0 million in FY 2016 to provide full Medicaid benefits to additional individuals that qualify for Medicaid under the bill. Department of Human Resources (DHR) expenditures (50% general funds, 50% federal funds) increase by $250,000 in FY 2016 to reprogram the Client Automated Resource and Eligibility System (CARES) to allow for additional income deductions. Out-years reflect elimination of one-time-only costs, annualization, growth in enrollment, and inflation. Revenues are not otherwise affected.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
FF Revenue	$626,600	$668,800	$682,100	$695,800	$704,800
GF Expenditure	$626,600	$668,800	$682,100	$695,800	$704,800
FF Expenditure	$626,600	$668,800	$682,100	$695,800	$704,800
Net Effect	($626,600)	($668,800)	($682,100)	($695,800)	($704,800)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local area agencies on aging (AAAs) collect as much as $298,350 in guardianship fees in FY 2016 under the bill.

Small Business Effect: Minimal.

Analysis

Bill Summary: "Available income" means the portion of income of a medically needy Medicaid recipient that the recipient is required to contribute to the cost of care for the recipient under Medicaid. "Disabled person" means a person other than a minor who has been judged by a court to be unable to (1) manage his property for specified reasons and, as a result, requires a guardian of his property or (2) provide for his daily needs sufficiently to protect his health or safety for specified reasons and, as a result, requires a guardian of the person.

Current Law: When determining eligibility for Medicaid for individuals in long-term care, Medicaid must deduct certain expenses to determine the available income for covering the cost of care. These deductions include (1) a personal needs allowance (about $76 per month); (2) a spousal or family allowance; (3) a residential maintenance allowance for a single person; and (4) incurred medical expenses that are not subject to payment by a third party (*i.e.*, Medicare and health insurance premiums and necessary medical care or remedial services recognized under State law but not subject to Medicaid reimbursement). Medically needy individuals are required to contribute all of their available income to the long-term care facility, with Medicaid making up the difference in cost.

Under the Code of Maryland Regulations (10.09.24.10(B)(4)), when calculating an institutionalized recipient's available income for the cost of care in a long-term care facility, guardianship fees *may not* be allowed as an income deduction.

The court may (1) superintend and direct the care of a disabled person; (2) appoint a guardian of the person; and (3) pass orders and decrees respecting the person as seems proper, including an order directing the disabled person to be sent to a hospital. On petition and after any required notice or hearing, a guardian of the person of a disabled person is appointed if the court determines from clear and convincing evidence that (1) the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or drug addiction and (2) no less restrictive form of intervention is available which is consistent with the person's welfare and safety.

Unless the alleged disabled person has counsel of his or her own choice, the court must appoint an attorney to represent the alleged disabled person during the pendency of the guardianship proceeding. The court is required to fix the fee of an appointed attorney, which is paid out of the fiduciary (guardianship) estate or as the court directs. In relation to a guardianship proceeding, a fiduciary estate is the real or personal property administered by a guardian of the person of a disabled person to the extent that the guardian exercises control over any property of the disabled person. Once a guardian is appointed, no attorney's fee in an amount exceeding $50 may be paid in a fiduciary estate administered under court jurisdiction unless the amount of the fee has been first approved by court order.

If the alleged disabled person is indigent, the State is required to pay a reasonable attorney's fee. In any action in which payment for the services of a court-appointed attorney for the alleged disabled person is the responsibility of the local department of social services, unless the court finds that it would not be in the best interests of the alleged disabled person, the court must (1) appoint an attorney who has contracted with DHR to provide those services, in accordance with the terms of the contract and (2) strike the appearance of a previously appointed attorney and appoint an attorney who is under contract with DHR, in accordance with the terms of the contract.

Background: *Dept. of Health & Mental Hygiene v. Campbell,* 364 Md. 108 (2001), presented the issue of whether guardianship commissions and attorney's fees of an attorney appointed guardian of the property of medically incompetent Medicaid recipients constitute available income under Medicaid, specifically whether such fees qualify as a personal needs allowance. The Court of Appeals of Maryland held, contrary to the Circuit Court for Baltimore City, that they are not.

Anecdotal evidence suggests that guardians of long-term care residents frequently retain the residents' monthly personal needs allowances to cover guardianship commissions or legal fees, which may leave unmet personal care needs for long-term care residents. In some states, the cost of guardianship commissions or legal fees are being placed on the long-term care facility. Other states include an allowance for guardianship fees, typically as part of or supplemental to the personal needs allowance. For example, in Virginia, up to 5% of an individual's gross monthly income can be deducted for guardianship fees.

Medicaid's Qualified Medicare Beneficiary (QMB) Program helps eligible Maryland residents by paying the full amount of monthly Medicare premiums, copayments, and deductibles. QMB is specifically for individuals or couples who qualify for Medicare but do not qualify for Medicaid because their income or assets exceed the allowed limits.

State Fiscal Effect: DHMH is responsible for administering and overseeing Medicaid and determines the eligibility rules. DHR is responsible for management of CARES, the computer system for all eligibility information, and the initial determination and annual redetermination of eligibility for most Medicaid programs, including long-term care.

DHR expenditures increase in fiscal 2016 to reprogram the CARES system to allow guardianship commissions and attorneys' fees to be deducted as a remedial service when determining a Medicaid recipient's available income. DHR estimates the cost to do so at approximately $250,000 (50% general funds, 50% federal funds). Federal fund revenues for CARES reprogramming increase correspondingly.

Medicaid expenditures (50% general funds, 50% federal funds) increase by a total of $1,003,131 in fiscal 2016, which accounts for the bill's October 1, 2015 effective date. This estimate reflects the cost of providing approximately 53 individuals currently covered under the QMB program with full Medicaid benefits. The information and assumptions used in calculating the estimate are stated below:

- an estimated 5,254 individuals currently enrolled in the QMB program become eligible for full Medicaid benefits if permitted to deduct an additional $50 per month from their income;
- an estimated 1% of these individuals (53) have a designated guardian; and
- the additional cost to provide full Medicaid benefits to these individuals (rather than benefits under QMB) is $2,103 per month ($25,236 per year).

Federal fund revenues for Medicaid increase correspondingly. Future year expenditures reflect 2% growth in enrollment and inflation.

Local Effect: The Maryland Department of Aging (MDOA) oversees a State guardianship program in which AAAs may be appointed guardian of the person for individuals age 65 and older who are found incompetent and have no family or friends willing to serve as guardian. In fiscal 2014, AAAs provided guardianship services to 868 individuals, 663 of whom were on Medicaid. According to MDOA, under the bill, local AAAs could collect guardianship fees from approximately 663 individuals. In fiscal 2016, revenues for local AAAs increase by as much as $298,350, which reflects the bills October 1, 2015 effective date. On an annualized basis, local AAAs could collect as much as $397,800. MDOA advises that any additional reimbursement received by AAAs enables the agencies to serve the growing population of elderly Marylanders who require guardianship program services.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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