HB 1233

Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1233 (Delegate Sydnor)
Health and Government Operations

Maryland Medical Assistance Program - Enhanced Security Compassionate Release Program

This bill establishes an Enhanced Security Compassionate Release Program in the Department of Health and Mental Hygiene (DHMH) to provide Medicaid services to specified former inmates of a State correctional facility. By October 1, 2017, DHMH must apply to the federal Centers for Medicare and Medicaid Services (CMS) for a waiver to establish the program. The program must include an initial cap on waiver participation at 500 individuals. DHMH must adopt regulations to implement the bill.

The bill takes effect July 1, 2017; however, establishment of the program is contingent on receipt of CMS approval of the waiver. If approval is received by July 1, 2019, the program takes effect on the date that notice of the approval letter is received by the Department of Legislative Services. If approval is not received by July 1, 2019, the program terminates.

Fiscal Summary

State Effect: DHMH can submit a waiver application to CMS using existing budgeted resources. However, DHMH advises that CMS *will not* approve a waiver as specified under the bill as it is impermissible under federal law and CMS guidance. To the extent a waiver is approved and the program is implemented, Medicaid expenditures increase by a significant amount, as discussed below. To the extent federal matching funds are available, federal fund revenues and expenditures increase correspondingly. **If and when a waiver is approved, this bill increases the cost of an entitlement program.**

Local Effect: None.

Small Business Effect: Likely none. However, to the extent the program is implemented, small business nursing facilities may receive additional admissions from the program. The

bill appears to place the requirement for and associated costs of certain security measures on the nursing facility.

Analysis

Bill Summary: The program is intended to serve an individual who (1) requires skilled nursing care or other related services; (2) was an inmate of a State correctional facility on the day immediately preceding the day on which the individual begins to receive nursing facility services; (3) was released *as if on parole* because the individual is terminally ill or medically incapacitated as to not constitute a risk of committing violent acts at the nursing facility or leaving the nursing facility unsupervised and for any reason other than to obtain medically necessary health care services; (4) signs a form acknowledging that the individual understands the reasons the individual will or may be required to immediately resume confinement in a State correctional facility; and (5) meets any other eligibility requirements established by DHMH. An individual diagnosed with Alzheimer's disease who is severely impaired must be deemed medically incapacitated.

In order to receive reimbursement for services, a nursing facility, *if required by the Department of Public Safety and Correctional Services* (DPSCS), must ensure that the individual is confined to a distinct part of the nursing facility that (1) has beds only for other individuals receiving services under the program; (2) cannot be entered or exited without the use of a key or other device usable only by authorized individuals and that keeps the part secure from other parts of the nursing facility and the outdoors; and (3) uses electronic or biometric systems to monitor the location of the individual and ensure that the individual is accounted for at all times. A nursing facility must also employ at least one full-time law enforcement officer for each part of the nursing facility that has beds used by program participants and other security personnel as required by regulations adopted by DHMH.

The bill may not be construed to affect, interfere with, or interrupt any services reimbursed through Medicaid.

Current Law: Beginning October 1, 2017, medical parole is limited to an inmate who is so *chronically* debilitated or incapacitated by a medical or mental health condition, disease, or syndrome as to be physically incapable of presenting a danger to society. The petition for medical parole, regardless of the petitioner, must include a recommendation by the medical professional treating the inmate under contract with the Maryland Division of Correction (DOC) or a local correctional facility or, if requested, a medical evaluation conducted at no cost to the inmate by a medical professional who is independent from DOC or the local correctional facility. If the Maryland Parole Commission (MPC) decides to grant medical parole, the decision must be transmitted to the Governor. The Governor

must then disapprove a recommendation for medical parole within 180 days of the decision by MPC. If the Governor does not disapprove the decision within that timeframe, the decision to grant parole becomes effective.

Medicaid may reimburse covered health care costs for parolees who are moved to hospitals or nursing facilities. However, among other requirements, such individuals must be placed in medical institutions that are generally available to the public and not operated primarily or exclusively to care for those involved with the criminal justice system. Residents must be free from physical restraint imposed solely for the purposes of discipline or convenience, free to choose visitors, live in an unlocked unit unless otherwise necessary for medical reasons, and be able to conduct private telephone conversations. Medicaid payment is only available when an inmate is an inpatient in a medical institution *not* under the control of the correctional system.

Background: According to The Pew Charitable Trusts, many states are grappling with an increasing number of older inmates. From 1999 to 2014, the number of state and federal prisoners age 55 or older increased by 250%. Some states, including Connecticut, have relocated prisoners to community nursing homes using medical or geriatric parole policies that allow for the release of certain older, terminally ill, or incapacitated inmates. However, Connecticut has been unsuccessful in obtaining federal Medicaid funding for this population and has covered its nursing home care (at a cost of $500 per day) using state funds only.

In 2016, Michigan considered legislation to allow certain "medically frail" inmates to move to community medical facilities, including a nursing home or hospice. The fiscal analysis of the legislation, which assumed Medicaid coverage of community services, estimated significant savings compared with the current average health care cost for incarcerated medically frail prisoners.

State Fiscal Effect: DHMH advises that, pursuant to CMS guidance and federal law, CMS *would not* approve a waiver to cover services for incarcerated individuals as proposed under the bill. Individuals eligible to participate in the program would be construed by CMS as still under the control of the correctional system and, therefore, ineligible for Medicaid. Without a waiver, the program would not receive federal matching funds and would need to be funded with 100% general funds.

For illustrative purposes only, should CMS grant a waiver or the State elect to implement the program in the absence of a waiver, Medicaid expenditures increase by at least $39.2 million (total funds) annually to provide nursing facility services to 500 individuals. This is based on the current average annual cost of Medicaid nursing facility services of $78,478. It *does not* reflect any additional costs to provide enhanced security measures as specified under the bill. If a waiver is granted and the program is eligible for federal

matching funds (Medicaid nursing facility services are typically eligible for a 50% federal match), federal fund revenues and expenditures increase accordingly.

If the program is implemented, DPSCS general fund expenditures decrease by between $4.8 million and $21.8 million annually due to transitioning individuals from State correctional facilities to nursing facilities. This savings is based on an average total cost per inmate of $800 excluding overhead, and $3,628 per month including overhead.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, SB 984 (Senator Nathan-Pulliam, *et al.* - Finance and Judicial Proceedings) is not identical.

Information Source(s): *Hartford Courant*; The Pew Charitable Trusts; Centers for Medicare and Medicaid Services; Department of Health and Mental Hygiene; Department of Public Safety and Correctional Services; Department of Legislative Services

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md/ljm

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