

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1167 (Delegate Pena-Melnyk, *et al.*)
 Health and Government Operations

Protect Maryland Health Care Act of 2018

This bill establishes a State individual health insurance mandate effective tax year 2019, and requires a specified payment for failure to maintain minimum essential coverage. Payments may be used as a down payment for purchasing coverage under a new Health Insurance Down Payment Initiative. By January 1, 2020, the Comptroller and the Maryland Health Benefit Exchange (MHBE) must develop a specified system to facilitate the down payment initiative. The bill also establishes procedures to accelerate enrollment of eligible individuals into Medicaid and the Maryland Children’s Health Program (MCHP), creates a Maryland Insurance Stabilization Fund to provide specified benefits, and establishes a Health Insurance Down Payment Escrow Fund. **The bill takes effect July 1, 2018.**

Fiscal Summary

State Effect: Special fund revenues increase significantly beginning in FY 2020 from payments made under the individual mandate. Special fund expenditures increase by as much as \$4.5 million in FY 2020 to implement the down payment initiative; they further increase to provide specified benefits under the Maryland Insurance Stabilization Fund (not reflected below). General fund expenditures increase by at least \$0.4 million in FY 2020 to implement the individual mandate. Future year general fund expenditures are indeterminate. Any impact on Medicaid and MCHP expenditures due to accelerated enrollment cannot be reliably quantified.

(\$ in millions)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
SF Revenue	\$0	-	-	-	-
GF Expenditure	\$0	\$0.4	-	-	-
SF Expenditure	\$0	\$4.5	\$2.8	\$2.8	\$2.8
Net Effect	\$0.0	-	-	-	-

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

State Individual Mandate

Applicability: Beginning January 1, 2019, each Maryland resident must maintain minimum essential coverage (for the individual and for each dependent). If an individual fails to maintain such coverage for three or more months of the taxable year, the individual must make a specified payment with the individual's State income tax return.

Payment Amount: The amount of the payment is the greater of (1) 2.5% of the sum of the individual's federal modified adjusted gross income (MAGI) and the MAGI of all individuals claimed on the return or (2) \$695 per adult and \$347.50 per child younger than age 18. The per individual rates must be adjusted annually for inflation.

Exemptions, Credits, and Appeals: An individual may not be assessed a payment if the individual qualifies for an exemption under federal law (*i.e.*, individuals who cannot afford coverage, taxpayers with income below the filing threshold, members of Indian tribes, and individuals with specified hardships) or the individual paid the federal individual shared responsibility payment.

An individual may claim a credit against the payment assessment in an amount equal to any lump-sum payment paid by the individual during the taxable year for qualified health plan (QHP) coverage. An individual must indicate on the State income tax return whether minimum essential coverage was maintained or whether an exemption is claimed. An individual has the right to appeal a payment, the denial of an exemption, or the denial of a credit.

Estimation of Payment Owed: Before the beginning of an annual open enrollment period, the Comptroller must provide an individual an estimate of the payment amount the individual will owe on the individual's next State income tax return if the individual does not maintain minimum essential coverage during the current calendar year. In consultation with the Comptroller, MHBE must provide opportunities through which an individual can estimate the individual's forthcoming payment amount if the individual fails to comply with the State individual mandate.

Maryland Insurance Stabilization Fund

The fund, to be administered by MHBE, consists primarily of specified payments related to the State individual mandate and must be used for:

- MHBE's reasonable administrative costs to implement the bill;
- reinsurance that lowers the exposure of individual market carriers;
- additional MHBE-approved individual assistance;
- subsidies that supplement federal advanced premium tax credits (APTCs) or cost-sharing reductions (CSRs) under the federal Patient Protection and Affordable Care Act (ACA);
- incentives for carriers to offer QHPs in underserved counties; and
- other measures deemed effective by MHBE in stabilizing the individual market and lowering premiums.

At the end of the fiscal year, the State Treasurer must prepare an annual report on the fund and submit the report to the General Assembly.

Health Insurance Down Payment Escrow Fund

The fund, also administered by MHBE, is established to hold payment amounts from an individual taxpayer to help the individual taxpayer purchase health insurance. MHBE must establish an account in the fund for each individual taxpayer who makes a payment for failure to maintain minimum essential coverage and issue a specified statement to each account holder. The fund must be used for the purchase of a QHP for a taxpayer or a member of the taxpayer's household who made a payment amount for use as a down payment to purchase health insurance.

Medicaid Eligibility and Enrollment Procedures

System to Accelerate Eligibility and Enrollment: The Comptroller, MHBE, and the Maryland Department of Health (MDH) must develop a system through which a determination of eligibility and enrollment into Medicaid and MCHP is done as soon as possible after an uninsured individual files a State income tax return indicating likely eligibility for Medicaid and MCHP. To the extent practicable, MHBE must use information on the individual's State income tax return to verify eligibility without requesting information from the uninsured individual. The Comptroller, MHBE, and MDH may enter into agreements, adopt regulations and guidelines, establish accounts, conduct trainings, provide public information, educate tax preparers, and take any other steps necessary to facilitate effective implementation.

Enrollment in Managed Care Organizations: MHBE and MDH must facilitate a Medicaid-eligible taxpayer's or household member's enrollment in a Medicaid managed care organization (MCO) within 10 business days. If a taxpayer or household member fails to select an MCO within a specified period of time, MDH must auto-assign the taxpayer or household member to an MCO within 30 days after the initiation of plan selections by MHBE and MDH.

Health Insurance Down Payment Initiative

System to Utilize Down Payments for Purchase of Coverage: The Comptroller and MHBE must develop a system to (1) encourage an individual to use the individual's payment amounts for failure to maintain minimum essential coverage to purchase health insurance and (2) facilitate and streamline the use of payment amounts. The system must be fully operational by January 1, 2020, and available for use by Maryland residents when filing a State income tax return for tax year 2019 and thereafter.

Default Enrollment Procedures: The bill establishes default enrollment procedures for a taxpayer who (1) authorizes disclosure of specified information to MHBE; (2) indicates that one or more household members are uninsured; and (3) deposits a payment under the State individual mandate into the Health Insurance Down Payment Escrow Fund.

MHBE must ensure that default enrollment coverage can be effectuated promptly even if the open enrollment period for QHPs is no longer in effect, including through establishment of special enrollment periods or procedures through which a carrier may voluntarily elect to accept individuals who enroll through default enrollment procedures.

Before default enrollment coverage is effectuated, the carrier must obtain informed consent from the prospective member. MHBE must pay the carrier the full amount of the down payment applicable to the taxpayer or household member for the purchase of the QHP. The carrier must obtain the remainder of premium payments owed through APTCs.

If an individual for whom a down payment is held by MHBE does not affirmatively select a QHP during the open enrollment period, MHBE must assess whether a zero-additional-cost plan is available for the individual and, if so, implement specified default enrollment procedures. If such a plan is not available, the down payment reverts to the Maryland Insurance Stabilization Fund.

Federal Assistance and Zero-additional-cost Plans: MHBE must take all feasible steps to establish eligibility for APTCs and enroll individuals in CSR plans. MHBE must also determine whether the taxpayer or household member is offered a zero-additional-cost plan (a QHP for which the annual premium can be covered solely by the individual's payment under the State individual mandate and any APTC). If more than one such plan is offered,

MHBE must assign the taxpayer or household member to the plan with the highest cost actuarial value and take all feasible steps to facilitate the individual's enrollment into coverage. MHBE must also notify the individual and obtain specified confirmation regarding federal APTCs.

Distribution of Down Payments to Carriers: Before the next open enrollment period begins, MHBE must contact each individual for whom it has received a down payment to provide specified information. If an individual for whom a down payment has been held by MHBE (including if an individual elects a prepayment option) chooses to enroll in a QHP, the down payment must be paid to the carrier, divided into 12 equal amounts paid each month.

Termination of Coverage: If an individual terminates QHP coverage before all 12 monthly amounts have been paid to the carrier, the remaining unspent amount must be transferred to the Maryland Insurance Stabilization Fund.

Use of Down Payments for Off-exchange Plans: MHBE and the Comptroller must determine whether it is administratively feasible to make such payments to a carrier for the purchase of a QHP that is off-exchange. If so, MHBE must make the payments to the carrier chosen by the individual.

Prepayment Option: MHBE must develop policies and procedures through which an individual, during an open enrollment period, may make a prepayment to help purchase a QHP, whether or not the individual has a down payment being held by MHBE. MHBE must provide the public information about the prepayment option. MHBE and the Comptroller must determine whether it is administratively feasible to make a prepayment to help purchase a QHP that is off exchange and, if so, must make such payments. If determined administratively feasible, the MHBE Board and the Comptroller must make the prepayment option available during the open enrollment period preceding the calendar 2020 plan year.

Lump-sum Payments: An individual who may owe a payment amount under the State individual mandate may make a lump-sum payment for QHP coverage and have that payment credited against any payment amount that the individual would otherwise owe on his or her next income tax return if the individual identifies the payment as such, completes applicable forms, and enrolls in a QHP for the plan year following the start of the applicable enrollment period. If the amount claimed as a prepayment exceeds the payment amount owed, the excess may not be credited against the individual's State income tax liability or returned to the individual.

Additional Comptroller Responsibilities and the State Individual Income Tax Return

Changes to State Income Tax Return: The Comptroller must include on the individual income tax return form two specified checkoffs for an individual that did not have health coverage during the taxable year to (1) authorize the Comptroller to disclose taxpayer health insurance information to MHBE and (2) authorize the Comptroller to deposit the payment amount in the Maryland Insurance Stabilization Fund without the taxpayer receiving health insurance coverage in return. If the taxpayer does not provide authorization to deposit the payment amount in this manner, the amount will be deposited in the Health Insurance Down Payment Escrow Fund. If a return is filed late, the payment amount must be deposited in the Maryland Insurance Stabilization Fund.

Sufficiency of Federal Reporting Systems: By September 1, 2018, MHBE and the Comptroller must determine whether information available through federal reporting systems will be sufficient, beginning in 2020, to verify the statements about health insurance that are included in the State income tax form. If the information is not sufficient for verification, MHBE and the Comptroller must establish a comparable system for verification of the health insurance status of individuals.

Current Law/Background:

Maryland Health Benefit Exchange

Function: MHBE was created during the 2011 session to provide a marketplace for individuals and small businesses to purchase affordable health coverage. Through the Maryland Health Connection (MHC), Maryland residents can shop for health insurance plans, compare rates, and determine their eligibility for APTCs, CSR plans, and public assistance programs such as Medicaid. Once an individual or family selects a QHP, they enroll in that program directly through MHC.

Enrollment: For calendar 2018, 153,571 individuals have enrolled in a QHP through MHBE. Most enrollees are eligible for a federal APTC or to purchase a CSR plan.

Federal Advanced Premium Tax Credits: Federal APTCs are available to individuals with incomes between 100% and 400% of federal poverty guidelines (FPG) and help to make monthly premiums more affordable. In calendar 2018, 121,400 individuals (79% of MHBE enrollees) qualify for an APTC. For January 2018, the monthly value of APTCs to Maryland residents was \$63.9 million.

Cost-sharing Reduction Plans and Payments: CSR plans are silver-level plans with reduced cost sharing that insurers are required to offer under the ACA to enrollees with incomes between 100% and 250% FPG. To compensate for additional claims expenses for

CSR enrollees, the federal government made payments directly to insurers based on actual utilization. CSR payments were discontinued in October 2017. CSR payments to Maryland insurers were valued at about \$65.0 million in calendar 2017.

2018 Rates: Only two carriers currently participate in MHBE, down from a high of eight in 2015. Premium rates initially approved for silver plans (the most popular plan type) increased by between 22% (Kaiser health maintenance organization) and 52% (CareFirst preferred provider organization) for calendar 2018. Following elimination of CSR payments, rates were amended, adding an additional 21 to 27 percentage points to the rates for on-exchange silver plans. For calendar 2018, the lowest rates available for a 40-year-old nonsmoker range from \$314 to \$516 per month depending on the type of plan and carrier selected. For a 60-year-old nonsmoker, the lowest rates range from \$668 to \$1,096 per month. These rates reflect the cost before application of the APTC. For most individuals enrolled in silver plans, any increase in premiums was likely offset by the APTC as it is calculated based on the cost of second-lowest silver plan available to the enrollee.

Individual Mandate

Under the ACA, an individual who can afford health insurance must purchase it or pay an individual shared responsibility payment with their federal income tax return. For tax year 2017, the payment is approximately the same as that proposed under the bill – the greater of (1) \$695/adult and \$347.50/child up to a maximum of \$2,085 or (2) 2.5% of MAGI.

Although the individual shared responsibility payment remains in law, federal tax legislation zeroed out the amount of the payment effective tax year 2019. Several states are considering imposing a state individual mandate to encourage younger, healthier consumers to maintain health insurance coverage. Massachusetts has had a state individual mandate since 2006.

In tax year 2015 (the most recent year for which data is available), 94,130 Maryland tax returns were subject to the federal payment, remitting a total of \$44.5 million. The majority of these returns (78%) had a MAGI of less than \$50,000.

Reinsurance

Reinsurance is insurance for insurers that protects against significant losses. The ACA included a federal transitional reinsurance program, for calendar 2014 through 2016, intended to stabilize the market due to an anticipated influx of higher cost individuals once insurance became guaranteed issue. Maryland also provided a State Supplemental Reinsurance Program in calendar 2015 and 2016. Federal reinsurance payments totaled \$217.2 million (\$57.4 million in 2014, \$103.9 million in 2015, and \$55.9 million in 2016).

State reinsurance payments totaled \$60.8 million (\$39.5 million in 2015 and \$21.3 million in 2016). Funding for State reinsurance came from funds leftover from the Maryland Health Insurance Plan (the State's former high-risk pool, which ended subsequent to passage of the ACA). A federal waiver is not required to implement a reinsurance program, unless a state wants to use federal funding.

Although the federal reinsurance program ended in calendar 2016, the U.S. Department of Health and Human Services (HHS) modified the federal risk adjustment program to include a reinsurance component beginning in calendar 2018. The program will reimburse for 60% of the cost of enrollees with total claims exceeding \$1.0 million. HHS has proposed to continue this program in calendar 2019.

State Revenues:

Revenues from the Individual Mandate

Special fund revenues increase significantly beginning in fiscal 2020 due to receipt of payments from taxpayers that did not maintain minimum essential coverage during tax year 2019. The amount of the payments is estimated to be *at least* \$44.5 million, based on the amount of penalties paid under the federal individual shared responsibility payment in tax year 2015 (the most recent year for which data is available). The federal penalty for tax year 2015 was the greater of (1) \$325/adult and \$162.50/child or (2) 2% of MAGI. That amount reflects less than half of the federal penalty for tax year 2018 and the State payment level proposed under the bill beginning in tax year 2019.

Under the bill, taxpayers may authorize the Comptroller to deposit the payment amount in either (1) the Maryland Insurance Stabilization Fund if the taxpayer does not wish to receive health insurance coverage or (2) the Health Insurance Down Payment Escrow Fund to be reserved to pay for health insurance coverage for the taxpayer, the taxpayer's spouse, and dependents of the taxpayer. The revenue split between the two funds cannot be reliably estimated at this time.

State Expenditures:

Maryland Health Benefit Exchange

Under the bill, MHBE must, among other things, develop a system to accelerate determination of eligibility and enrollment into Medicaid and MCHP based on information provided from State income tax returns (performed with the Comptroller and MDH), implement an auto-enrollment process for individuals who elect to participate in the down payment initiative and who are eligible for a zero-additional-cost plan, maintain separate

accounts in the Health Insurance Down Payment Escrow Fund, and make monthly payments to carriers on behalf of participating individuals.

Thus, MHBE special fund expenditures increase by as much as \$4.5 million in fiscal 2020. This estimate reflects the cost of information technology (IT) contractual expenses to make the necessary changes to the health benefit exchange eligibility system, increased spending on the Consolidated Service Center contract to include 15 additional customer service representatives and 26 additional navigator positions, and hiring 2 internal auditors to manage the Health Insurance Down Payment Escrow Fund. MHBE advises that additional customer service representatives and navigators are needed for outreach and enrollment activities, which may serve as many as 129,000 potential new MHBE enrollees under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Personnel expenditures are assumed to begin October 1, 2019, with new systems and procedures fully operational by January 1, 2020.

	<u>FY 2019</u>	<u>FY 2020</u>
Positions	2	–
One-time Contractual IT Expenses	\$2,363,500	–
Consolidated Service Center Contract	2,000,000	\$2,000,000
Ongoing IT Expenses	–	630,000
Salaries and Fringe Benefits	100,672	138,223
One-time Start-up Expenses	9,780	–
Ongoing Operating Expenses	<u>450</u>	<u>600</u>
Total State Expenditures	\$4,474,402	\$2,768,823

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Maryland Insurance Stabilization Fund

Under the bill, the fund, which consists primarily of payments related to failure to comply with the State individual mandate, must be used for, among other things, (1) reinsurance; (2) additional MHBE-approved individual assistance; (3) supplemental premium subsidies; and (4) incentives for carriers to offer QHPs in underserved counties.

Although the bill does not specify the parameters of these benefits, special fund expenditures from the fund increase by a significant amount beginning in fiscal 2020 to provide such benefits. Actual expenditures depend on the amount of revenues available to the fund, the claims experience of participating carriers, the scope of any individual assistance provided, the design and number of individuals eligible for any supplemental premium subsidies, and the amount of any incentives provided to carriers. *For illustrative purposes only*, combined payouts under the federal transitional reinsurance program and

the State supplemental reinsurance program in calendar 2015 (the peak year of funding) totaled \$143.4 million.

Implementation of State Individual Mandate

The Comptroller's Office will incur a one-time general fund expenditure increase of at least \$432,000 in fiscal 2020 to make changes to the personal income tax return for tax year 2019. Changes include adding a minimum of five new fields (to collect information on whether the taxpayer and, if applicable, the taxpayer's spouse and any dependents, maintained minimum essential coverage; to collect the taxpayer's federal MAGI, which cannot be calculated from the information currently captured on the form; and to allow taxpayers to claim one of five exemptions from the individual mandate), two checkoffs, and one credit for any lump-sum payment paid by the individual as permitted under the bill. This estimate includes data processing changes to the SMART income tax return processing and imaging systems and systems testing. The Comptroller's Office advises that additional fields and schedules may be required as needed to adequately administer the individual mandate.

Ongoing general fund costs for the Comptroller's Office include verifying the new fields on paper-filed returns and additional staffing for taxpayer service, assessment, audit, and collection services. The Comptroller's Office advises that, due to the complexity of the bill, an accurate estimate of ongoing expenditures cannot be reliably determined at this time, but is likely several hundred thousand dollars annually.

Additional Information

Prior Introductions: None.

Cross File: SB 1011 (Senator Feldman, *et al.*) - Finance and Budget and Taxation.

Information Source(s): Comptroller's Office; Maryland Health Benefit Exchange; Maryland Insurance Administration; Department of Legislative Services

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Analysis by: Jennifer B. Chasse

Direct Inquiries to:
(410) 946-5510
(301) 970-5510