

**Department of Legislative Services**  
 Maryland General Assembly  
 2001 Session

**FISCAL NOTE**  
**Revised**

Senate Bill 326 (Senator Hogan)

Finance

Environmental Matters

**Maryland Medical Assistance Program - Reimbursement for Outpatient Mental Health Treatment - Dual Eligibility**

This bill requires Medicaid to reimburse an outpatient mental health care “provider” the entire amount of the program fee for outpatient mental health treatment provided to an individual eligible for both Medicare and Medicaid, including any amount ordinarily withheld as a psychiatric exclusion and any copayment not covered under Medicare.

The bill takes effect July 1, 2001.

**Fiscal Summary**

**State Effect:** Medicaid expenditures could increase by \$3.2 million (\$2.7 million general funds, \$500,000 federal funds) in FY 2002. Future year estimates reflect inflation. No effect on revenues.

(\$ in millions)	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	2.7	2.9	3.0	3.2	3.4
FF Expenditure	.5	.5	.6	.6	.6
Net Effect	(\$3.2)	(\$3.4)	(\$3.6)	(\$3.8)	(\$4.0)

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

**Local Effect:** None.

**Small Business Effect:** Meaningful. Small business mental health care providers that treat individuals with dual eligibility would be reimbursed for the 37.5% psychiatric exclusion that neither Medicare nor Medicaid covers.

## Analysis

**Current Law:** An individual with dual eligibility has both Medicare and Medicaid coverage. When such an individual receives outpatient mental health treatment, Medicare coverage is calculated by first excluding 37.5% from the fee schedule amount, and then paying 80% of the remaining 62.5%. Medicaid then pays 20% of the remaining 62.5%. The original 37.5% “psychiatric exclusion” is left unpaid for individuals with dual eligibility.

**Background:** In 1995 the Maryland Psychiatric Society sued the Maryland Department of Health and Mental Hygiene (DHMH) and the U.S. Department of Health and Human Services, seeking to require the Medicaid program to reimburse mental health providers for the 37.5% psychiatric exclusion. The U.S. District Court for Maryland granted summary judgment in the society’s favor. The U.S. Court of Appeals overturned this judgment in *The Maryland Psychiatric Society, Inc. v. Martin P. Wasserman, J.D. and Donna E. Shalala*, No. 95-2767, U.S. App. (4<sup>th</sup> Cir. Dec. 16, 1996), holding that the District Court’s ruling imposed a financial burden on states that found no basis in the relevant Medicare and Medicaid statutes. The court reasoned, in part, that if the U.S. Congress had intended states to pay the 37.5% psychiatric exclusion, it would have said so explicitly.

**State Fiscal Effect:** To cover the 37.5% psychiatric exclusion on out-patient mental health services, Medicaid expenditures could increase by \$3.2 million (\$2.7 million general funds, \$500,000 federal funds) in fiscal 2002. This estimate is based on the following facts and assumptions:

- there are 29,000 individuals dually-eligible for Medicare and Medicaid coverage;
- 5,400 dual eligibles will receive out-patient mental health services in fiscal 2002;
- Medicaid will receive a 50% federal fund match for 1,700 dual eligibles who receive out-patient mental health treatment; and
- Medicaid will not receive any federal fund match on 3,700 dual eligibles who receive out-patient mental health treatment.

Future year expenditures reflect 6% annual inflation in the Medicaid program. Revenues would not be affected.

## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 1108 (Delegate Rosenberg, *et al.*) – Environmental Matters.

**Information Source(s):** Department of Health and Mental Hygiene (Mental Hygiene Administration, Medicaid), Department of Legislative Services

**Fiscal Note History:** First Reader – February 6, 2001  
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