**Department of Legislative Services**
Maryland General Assembly
2002 Session

# FISCAL NOTE
**Revised**

Senate Bill 206 (Senator Hogan, *et al*.)
Finance

## 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 Medicaid 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, 2002.

## Fiscal Summary

**State Effect:** Medicaid expenditures could increase by $4.24 million ($2.99 million general funds, $1.25 million federal funds) in FY 2003. Future year estimates reflect inflation. No effect on revenues.

| ($ in millions) | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 |
|---|---|---|---|---|---|
| Revenues | $0 | $0 | $0 | $0 | $0 |
| GF Expenditure | 2.99 | 2.97 | 3.18 | 3.40 | 3.63 |
| FF Expenditure | 1.25 | .56 | .60 | .64 | .69 |
| Net Effect | ($4.24) | ($3.54) | ($3.78) | ($4.04) | ($4.32) |

*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. The 1998 Survey of U.S. Business by the U.S. Census Department calculated that 93.7% of the firms in Maryland providing ambulatory health care services had fewer than 20 employees.

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## 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%. State regulations prohibit Medicaid providers from charging the dually-eligible enrollees for the difference. 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. (4th 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:** DHMH must submit a State Medicaid plan amendment to the federal Centers for Medicare and Medicaid Services (CMS) to receive federal matching funds for certain dually-eligible individuals. Assuming the amendment is approved, Medicaid expenditures could increase by $4.24 million ($2.99 million general funds, $1.25 million federal funds) in fiscal 2003 to cover the 37.5% psychiatric exclusion on out-patient mental health services. 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 2003;

- Medicaid will receive a 50% federal fund match for 1,700 dual eligibles who receive out-patient mental health treatment;

- Medicaid will not receive any federal fund match on 3,700 dual eligibles who receive out-patient mental health treatment;

- mental health service costs average $1,600 per person per year; and

- a one-time $1 million programming cost to modify computer systems to process co-insurance payments for certain dually-eligible individuals.

Future year expenditures reflect ongoing claims processing and systems costs and 7% annual inflation in the Medicaid program. Revenues would not be affected.

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## Additional Information

**Prior Introductions:** Identical bills, HB 1108 and SB 326, were introduced in the 2001 session. HB 1108 was not reported by the House Environmental Matters Committee. SB 326 was passed by the Senate Finance Committee and referred to Environmental Matters. SB 326 was not reported by Environmental Matters.

**Cross File:** HB 249 (Delegate Hammen, *et al.*) – Environmental Matters.

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

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