Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 209 (Senators Hogan and Hollinger)
Finance Health and Government Operations

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 and for whom the Department of Health and Mental Hygiene (DHMH) may obtain federal matching funds, including any amount ordinarily withheld as a psychiatric exclusion and any copayment not covered under Medicare.

It is the intent of the General Assembly that DHMH (Mental Hygiene Administration) must fund the bill's provisions through existing resources by reprioritizing existing grant funds. DHMH must submit a report by August 1, 2003 to the Governor, the Senate Budget and Taxation Committee, the Senate Finance Committee, the House Appropriations Committee, and the House Health and Government Operations Committee, demonstrating that existing grant funds have been reprioritized to provide funding for the bill.

The bill takes effect July 1, 2003.

Fiscal Summary

State Effect: Medicaid expenditures could increase by $1.68 million ($937,800 general funds, $787,800 federal funds) in FY 2004 and Mental Hygiene Administration (MHA) general fund grant expenditures would decrease by $937,800. Federal funds are dependent on Medicaid plan amendment approval. Future year estimates reflect inflation. No effect on revenues.

(in dollars)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Revenues	$0	$0	$0	$0	$0
FF Expenditure	737,800	787,300	840,000	896,300	956,300
Net Effect	($737,800)	($787,300)	($840,000)	($896,300)	($956,300)

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.

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. Therefore, a provider only receives reimbursement for 62.5% of the total bill. The original 37.5% "psychiatric exclusion" is left unpaid for individuals with dual eligibility.

Background: In 1995 the Maryland Psychiatric Society sued 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 $1,675,664 ($737,832 federal funds, $937,832 general funds) in fiscal 2004 to cover the 37.5% psychiatric exclusion on out-patient mental health services, and MHA general fund expenditures would decrease by $937,832 in fiscal 2004. This estimate is based on the following facts and assumptions:

- there are 75,000 individuals dually-eligible for Medicare and Medicaid coverage;
- 5,000 dual eligibles will receive out-patient mental health services in fiscal 2004;
- Medicaid will receive a 50% federal fund match for 2,598 dual eligibles who receive out-patient mental health treatment;
- mental health service costs average $1,515 per person per year and the 37.5% psychiatric exclusion averages $568 per person per year;
- a one-time $200,000 programming cost to modify computer systems to process co-insurance payments for certain dually-eligible individuals; and
- MHA reprioritizes general fund grants to cover the $937,832 Medicaid general fund expenditure generated by the bill's requirements.

Future year expenditures reflect ongoing claims processing and systems costs and 6.7% annual inflation in the Medicaid program. Revenues would not be affected.

Additional Information

Prior Introductions: Identical bills, SB 206 and HB 249, were introduced in the 2002 session. SB 206 was reported favorably by the Senate Finance Committee and rereferred to the Senate Budget and Taxation Committee, which also reported favorably on the bill. No action was taken on the cross file, HB 249, by the House Environmental Matters Committee. 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 675 (Delegate Hubbard) – Health and Government Operations.

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

Fiscal Note History: First Reader - February 24, 2003
mdf/jr Revised - Senate Third Reader - March 25, 2003

Analysis by: Susan D. John

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