HB 1540

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1540 (Delegate Benson, *et al.*)
Health and Government Operations

Health Care Reform Act of 2008

This bill • requires Maryland employers to make a specified amount of health care contributions for full- and part-time employees or pay into a specified fund; • establishes the Maryland Cooperative Health Insurance Purchasing Program and a Health Trust Fund; • expands the Maryland Children's Health Program to specified parents, caretaker relatives, and children regardless of immigration status; • makes substantial reforms to the individual health insurance market; • expands eligibility for the small group market to include small businesses with up to 100 eligible employees; • establishes a Maryland Health Care Cost and Quality Transparency Commission and a Health Care Cost and Quality Transparency Fund; and • requires the Maryland Health Insurance Plan board to establish a specified questionnaire to be used in determining MHIP eligibility.

The bill takes effect July 1, 2008.

Fiscal Summary

State Effect: Potentially significant amount of special fund revenues accrue to the Health Trust Fund from employer contributions and fines beginning in FY 2011. Potential decrease in State income tax revenues beginning in FY 2011. Significant operational and expenditure impact on Medicaid; MCHP; MHIP; the Maryland Insurance Administration; the State Employees and Retirees Health and Welfare Benefits Program (State plan); the Department of Health and Mental Hygiene; and the Department of Labor, Licensing, and Regulation to implement and administer various provisions of the bill. The amount of this impact cannot be reliably estimated at this time.

Local Effect: Local governments would be required to comply with the employer health care contribution requirements of the bill. Potential decrease in local income tax

revenues beginning in FY 2011. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Small businesses would be required to comply with the employer health care contribution requirements of the bill. Premiums in the small group market could increase under the bill by an estimated 2% to 5%.

Analysis

Bill Summary:

Employer Health Expenditures: Each employer in the State must elect to make "health expenditures" for part-time and full-time employees and, if applicable, their dependents in a specified manner, or pay an equivalent amount into the Health Trust Fund.

Health expenditures means any amount paid by an employer to, or on behalf of, its employees and their dependents to provide health care or health-related services, such as contributions to a health savings account, wellness activities, pharmacy benefit management, employer-sponsored primary care clinics, or health insurance premiums.

An employer's cumulative amount of health expenditures for full-time employees (those working 120 or more hours per month) must be at least 7.5% of wages paid to full-time employees. Likewise, for part-time employees (those working less than 120 hours per month), an employer's cumulative contribution must be at least 7.5% of wages paid to part-time employees.

Employees of employers that elect to pay into the Health Trust Fund must enroll in the Maryland Cooperative Health Insurance Purchasing Program (MCHIPP) to receive health care coverage, unless the employee has evidence of other coverage or the cost of coverage under MCHIPP exceeds 5% of wages paid by the employer for coverage with a maximum out-of-pocket cost of $1,500.

An employee must accept the health expenditures made by the employer unless it would result in annual health expenditures by the employee in excess of 5% of wages or the employee has evidence of other coverage.

By July 1, 2010, each employer must elect how it will make health expenditures for employees and notify DLLR. Employers that fail to make this election will be deemed to pay an employer fee into the Health Trust Fund.

After January 1, 2011, each employer must notify DLLR by September 15 annually of its election for the subsequent calendar year. An employer must notify its employees of • its election within five days of making the election; and • the requirement for employees to accept health care expenditures or enroll in MCHIPP.

Each employer must adopt and retain a cafeteria plan to allow employees to pay premiums for health care coverage on a pretax basis.

Employers that fail to comply with these provisions without good cause as determined by DLLR are subject to a fine of up to • for a first violation, $1,000 per employee; • for a second violation, $2,000 per employee; and • for subsequent violations, $3,000 per employee. All fines must be deposited by DLLR into a separate account in the Health Trust Fund.

Maryland Cooperative Health Insurance Purchasing Program: The purpose of MCHIPP, which will be run by the MHIP board, is to provide access to affordable and comprehensive health insurance for employees and their dependents.

Eligibility for MCHIPP is limited to residents of the State who are employees (or dependents of employees) of an employer that pays into the Health Trust Fund, including those individuals eligible for Medicaid or MCHP. Beginning July 1, 2010, MCHIPP must provide health care coverage as specified under the bill.

The bill enumerates the specific duties of the MHIP board with respect to administration of MCHIPP, including eligibility and enrollment; participation by health, dental, and vision plans; and benefit design, reimbursement, premiums, and subsidies to eligible enrollees. The MHIP board must maintain enrollment and expenditures to ensure that expenditures do not exceed revenues and if sufficient revenues are not available, institute appropriate measures to ensure fiscal solvency. The MHIP board must also establish criteria and procedures through which employers direct employees' premium dollars, withheld under the terms of cafeteria plans, to the program and share specified information with DLLR.

The MHIP board must develop and offer a variety of benefit plan designs, including low-cost plans for adults with family incomes below 300% of federal poverty guidelines. Each participating health plan must offer a Medicaid and MCHP plan for individuals eligible for those programs. Individuals enrolled in Medicaid or MCHP and eligible for MCHIPP must obtain health care insurance through MCHIPP.

All MCHIPP plans must include prescription drug benefits, combined with enrollee cost sharing levels that promote prevention and health maintenance. Deductibles,

coinsurance, and copayment requirements must be set with consideration of affordability and whether those costs would deter enrollees from obtaining appropriate care.

The MHIP board must establish premiums that take into account the costs of health care typically paid for by employers and employees in the State. Premiums for employees with household incomes at or below 300% FPG may not exceed 5% of household income, after taking into account tax savings under a cafeteria plan. Employers may pay all or a portion of the premium. Employees and dependents covered through Medicaid or MCHP must make any premium or cost sharing payments allowed under those programs.

The MHIP board must obtain from employers the applicable premium contributions for their employees and their dependents, and where applicable enroll eligible individuals in Medicaid or MCHP. Contracts with participating health plans must require that the plan utilize specified efficient practices to improve and control costs.

Health Trust Fund: The fund supports the activities of MCHIPP and is a special, nonlapsing fund not subject to general fund reversion that consists of • specified payments from employers; • premium contributions from enrollees; • investment earnings; and • any other money accepted for the benefit of the fund. Expenditures from the fund may be made only in accordance with the State budget.

Maryland Children's Health Program: The bill expands MCHP to parents and caretaker relatives with a dependent child living in the home and annual household incomes up to 300% FPG. Children, who except for their immigration status otherwise meet eligibility requirements, are eligible for MCHP. The current MCHP premium family contribution is repealed; instead, DHMH must establish a family contribution that varies with income and family size and does not exceed 5% of the family's income. In 2008, for a family of three at 300% FPG, 5% of family income would be $2,640.

Maryland Health Care Cost and Quality Transparency Commission: By December 1, 2010, the commission, located in DHMH, has to adopt a health care cost and quality transparency plan that will, when implemented, result in the transparent public reporting of safety, quality, and cost efficiency information at all levels of the health care system.

The plan must • include specified strategies and focus on data elements that foster quality improvement and peer group comparisons; • facilitate value-based, cost-effective purchasing of health care services; • result in usable information that allow comparisons of health plans, insurers, facilities, and providers; • be designed to measure specified performance domains; • use and build on existing data collection standards and methods; and • incorporate and utilize specified data.

The commission must, to the extent possible, recover the cost of implementing the plan from fees charged to data sources and users. All fees must be deposited into the Health Care Cost and Quality Transparency Fund.

Commission members may receive a per diem of $100 and are entitled to reimbursement for expenses under standard State travel regulations, as provided in the State budget.

Health Care Cost and Quality Transparency Fund: The fund is intended to support the activities of the Health Care Cost and Quality Transparency Commission. The fund is a special, nonlapsing fund not subject to general fund reversion and consists of • fees charged to data sources and users; • grants or contributions from private sources; and • any other money accepted for the benefit of the fund. Expenditures from the fund may be made only in accordance with the State budget.

Individual Health Insurance Market Reforms: By July 1, 2009, each carrier in the individual market that conducts medical underwriting must use the standardized health questionnaire developed by the MHIP board. A carrier may, based on the questionnaire submitted by an applicant, decline coverage and direct an eligible individual to MHIP.

By October 1, 2009, the Maryland Insurance Commissioner must adopt regulations governing five classes of individual health benefit plans that carriers must offer in the individual market, and within 90 days of adoption of the regulations, approve the plans. Each class must include one baseline HMO and one baseline PPO.

As of January 1, 2010, carriers in the individual market must guarantee issuance of the five classes of approved plans and discontinue selling other plans. Individuals who purchase one of these plans may only change plans as established by the Insurance Commissioner in regulations.

A health benefit plan must take effect within 31 days of receipt of the individual's application, standardized questionnaire, and premium payment. Individual carriers must develop rates for these plans based on an adjusted community rate and may only vary the rate for geographic area, family composition, and age. Adjustments to rates may not result in a rate per enrollee of more than 200% of the lowest rate for all adult age groups. Premiums may only be adjusted annually, except to reflect changes in family composition or changes to the plan requested by the eligible person.

Medical Loss Ratios for Insurers: The Insurance Commissioner must require insurers, nonprofit health service plans, or health maintenance organizations to file new rates if their medical loss ratio is less than 85%.

Health Questionnaire: The MHIP board must develop a standardized health questionnaire to be used by all health plans and insurers that offer and sell individual coverage. The questionnaire must provide for an objective evaluation of a person's health status to identify the 3% to 5% of persons who are the most expensive to treat if covered under an individual health benefit plan. The MHIP board has to obtain certification from an actuary that the questionnaire meets this requirement. The questionnaire must be designed to collect only information necessary to identify if a person is eligible for coverage in MHIP and may not be used by an insurer to deny coverage to an individual, except those automatically eligible for MHIP. The MHIP board must also create a list of serious health care conditions or diagnoses that make an applicant automatically eligible for MHIP based on the questionnaire.

Current Law:

Medicaid and the Maryland Children's Health Program: Medicaid provides health care coverage to children, pregnant women, elderly or disabled individuals, and indigent parents who pass certain income and asset tests. Eligibility for MCHP currently extends to individuals younger than age 19 with family incomes up to 300% FPG. Children in families with incomes above 200% but at or below 300% FPG are enrolled in the MCHP Premium Plan. These families pay a family contribution toward the cost of the program equal to 2% of the annual income for • a family of two at 200% FPG (about $560 per year), for families earning up to 250% FPG; or • a family of two at 250% FPG (about $700 per year), for families earning up to 300% FPG. Individuals who have been eligible for employer-sponsored health insurance in the previous six months are ineligible for MCHP. Children and pregnant women who have not been legal immigrants for at least five years are ineligible for federal Medicaid and MCHP benefits. The State currently provides Medicaid benefits to legal immigrant pregnant women and children who have been in the country for less than five years using general funds only. Emergency services are provided to all financially eligible individuals regardless of immigration status.

Chapter 7 of the 2007 Special Session: Chapter 7 expanded eligibility for Medicaid to parents, caretaker relatives, and childless adults with incomes up to 116% FPG effective July 1, 2008. The Act also established a Small Employer Health Benefit Plan Premium Subsidy Program and the Health Care Coverage Fund. Full Medicaid benefits will be provided to parents and caretaker relatives; however, DHMH may cap enrollment, phase in, and limit benefits for childless adults. In fiscal 2010 through 2012, it is the intent of the General Assembly that benefit expansion to childless adults occur upon attainment of specified combined total general fund and Education Trust Fund revenues as submitted in the Governor's proposed budget.

Maryland Health Insurance Plan: MHIP provides health care coverage for individuals who have certain qualifying conditions or do not have access to health insurance. Members are required to pay a premium based on age, subscriber type, and type of benefit plan. Individuals with incomes below 300% FPG may receive discounted premiums through MHIP+.

Small Group Market: The Comprehensive Standard Health Benefit Plan is a standard health benefit package (standard plan) that carriers must sell to small businesses (2-50 employees). Carriers must offer CSHBP to all small businesses but may sell additional benefits or enhancements through riders. Riders must be offered and priced separately. CSHBP includes guaranteed issuance and renewal, adjusted community rating with rate bands, and no preexisting condition limitations. In order to maintain affordability, the average CSHBP premium rate per employee must remain below 10% of Maryland's average annual wage. MIA and MHCC jointly regulate the small group market.

Individual Market: A carrier may sell a health benefit plan to an individual, subject to certain restrictions such as creditable coverage, preexisting conditions, and continuation coverage. A carrier may use medical underwriting in the individual market, which means some people may be medically ineligible to purchase health insurance in the individual market. MIA regulates the individual (nongroup) market.

Payroll Deduction/"Cafeteria" Plans: A section 125 or "cafeteria" plan allows employees to withhold a portion of their pretax earnings to cover certain medical or child care expenses. Benefits are not subject to federal or State taxes, thereby reducing an employee's taxable income and increasing the percentage of their take-home pay.

Background: The bill is modeled after California Assembly Bill 8, which was passed by the California General Assembly, but was vetoed by Governor Schwarzenegger because, according to the veto message, it • did not achieve universal coverage; • left some Californian's vulnerable to loss or denial of health insurance coverage; and • placed the majority of the financial burden for financing on one segment of the economy.

Fiscal estimates for the bill prepared by Dr. Jonathan Gruber of the Massachusetts Institute of Technology indicated that, upon full implementation, the proposal could result in net savings to California of between $380 and $610 million. Fiscal estimates of the bill as amended, based on Dr. Gruber's analysis, assumed potential net savings of $185 to $420 million.

State Fiscal Effect: The bill would implement a complex health care reform proposal in the State that would affect all employers and employees; the Medicaid, MCHP, and

MHIP programs; and the small group and individual health insurance markets, as well as have significant tax implications.

Special fund revenues could increase by a significant amount beginning in fiscal 2011 from employer contributions to the Health Trust Fund and fines from noncompliant employers. MIA special fund revenues could increase beginning in fiscal 2009 from the rate and form filing fee. General fund revenues could decrease by a significant amount beginning in fiscal 2011 due to a loss of State income tax revenues from expanding employee access to health insurance benefits on a pretax basis.

General fund MCHP expenditures could increase by a significant amount beginning in fiscal 2009 to expand MCHP to parents and caretaker relatives with incomes between 116% and 300% FPG and to all children regardless of immigration status. Federal law prohibits coverage of parents under the federal State Children's Health Insurance Program. Undocumented immigrants and legal immigrant children are also ineligible for federal Medicaid or SCHIP benefits. Therefore, no federal matching funds would be available except for emergency services, which are already covered under current law. Medicaid expenditures (50% general funds, 50% federal funds) could increase by a significant amount beginning in fiscal 2011 due to increased enrollment and administrative changes relating to MCHIPP.

MIA special fund expenditures could increase beginning in fiscal 2009 to adopt regulations, review rate and form filings, handle complaints, develop the standardized health questionnaire, and enforce the bill's insurance reform provisions. State plan expenditures (60% general funds, 20% special funds, 20% federal funds) could increase beginning in fiscal 2011 to implement health care contributions for part-time and contractual employees. General fund expenditures could also increase for DHMH and DLLR to implement and administer various provisions of the bill.

Any actual impact cannot be reliably estimated at this time due to a significant number of unknown variables, such as • the number of employers in the State that currently do not provide health care contributions equal to or greater than 7.5% of wages; • the number of employees and dependents that would be covered under MCHIPP; • the amount of MCHIPP premium costs that would be paid by employees; • the benefit plan structure under MCHIPP, which would drive administrative and benefit costs; • the specific tax implications of expanding access to pretax health care benefits; • the potential number of parents and relative caretakers with incomes above 116% FPG but below 300% FPG that would enroll in MCHP and the level of family contribution that would be required of those enrollees; and • the potential impact on the MHIP program eligibility and enrollment under the bill.

Additional Comments: To the extent health insurance coverage increases under the bill, uncompensated care costs in the State would decrease. According to MIA, the small group and individual group health insurance changes under the bill could provide a disincentive for carriers to operate in Maryland.

Exhibit 1 displays 2008 FPG by family size.

Exhibit 1
2008 Federal Poverty Guidelines

Family Size	300% FPG
2	$42,000
3	$52,800
4	$63,600
5	$74,400

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene; Maryland Insurance Administration; Department of Labor, Licensing, and Regulation; Department of Budget and Management; Department of Legislative Services

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