

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 706 (Delegate Hubbard, *et al.*)
Health and Government Operations

Nursing Facilities - Maryland Medical Assistance Program - Rights

This bill authorizes a circuit court that has been petitioned by a nursing facility for specified orders to issue a judgment finding a resident or the resident's agent civilly liable to the nursing facility if he or she fails to comply with the court order within 14 days of issuance. The bill applies to orders directing the resident or agent to (1) pay the facility from funds Medicaid has determined to be available for a resident's care; or (2) seek Medicaid assistance or cooperate in the eligibility determination process. The court may award the amount determined to be available by Medicaid or the cost billed by the nursing facility for providing the resident's care, as appropriate, and/or a civil penalty of up to \$20,000. The nursing facility may also be awarded reasonable attorney's fees and its court costs.

The Office of the Attorney General, in consultation with the Department of Health and Mental Hygiene and others, must revise documents to clarify the role of a nursing facility resident and agent in the Medicaid eligibility determination process.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: The bill does not materially impact governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: An “agent” means a person who manages, uses, or controls the funds or assets that may legally be used to pay an applicant’s or resident’s share of costs or other charges for facility services.

In general, a facility may not charge an applicant or resident who is a Medicaid beneficiary, or his or her agent, any amount above that determined and covered by Medicaid. Unless otherwise agreed, the financial obligation of the applicant’s or resident’s agent is limited to the amount of available funds to the agent by Medicaid. A facility may require an applicant, resident, or agent to agree to distribute to the facility any funds which Medicaid has determined to be available to pay for the applicant’s or resident’s care.

A resident or agent of the resident who has not paid a current obligation for the resident’s care may apply to Medicaid for a determination of available funds to pay for the care. Medicaid, in turn, must make the determination. If a resident or agent who has not paid a current obligation for the resident’s care fails to request a determination, the facility may, without requesting the appointment of a guardian, petition the circuit court for an order directing the resident or agent to request the determination with due diligence.

If a resident or resident’s agent fails to pay for the resident’s care from funds that Medicaid has determined to be eligible to pay for that care, the facility may, without requesting guardian appointment, petition the circuit court for an order directing the resident or agent to pay the facility from those available funds. Any agent who willfully or with gross negligence violates the requirements regarding the distribution of the applicant’s or resident’s funds is subject to a civil penalty in at least the amount of the funds subject to violation.

An applicant, resident, or resident’s agent must seek, on behalf of the applicant or resident, all available assistance which may be available from Medicaid to the applicant or resident, and the facility must cooperate with and assist the agent in seeking such assistance. If a resident or resident’s agent fails to seek assistance from Medicaid or to fully cooperate in the eligibility determination process, the providing care facility may, without requesting guardian appointment, petition the circuit court for an order requiring the resident or resident’s agent to seek such assistance or to fully cooperate in the eligibility determination process with due diligence. Any agent who willfully and with gross negligence violates the application requirements is subject to a civil penalty of up to \$10,000.

The Attorney General is responsible for violation enforcement and prosecution.

Additional Information

Prior Introductions: None.

Cross File: SB 751 (Senator Middleton, *et al.*) - Finance.

Information Source(s): Office of the Attorney General, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2010
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