

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Revised

Senate Bill 86

(Chair, Judicial Proceedings Committee)(By Request -
Departmental - Public Safety and Correctional Services)

Judicial Proceedings

Judiciary

**Correctional Services - Medication for Chronic or Acute Medical Condition -
Waiver of Liability**

This departmental bill authorizes the Department of Public Safety and Correctional Services (DPSCS) to issue nonnarcotic medications and prescriptions to inmates awaiting release and limits the liability of medical personnel who may provide the prescriptions.

Fiscal Summary

State Effect: General fund expenditures decrease by \$227,900 in FY 2011, while federal fund revenues and expenditures increase by a commensurate amount. The impact in future years reflects annualization and a 6% annual inflation rate for medications.

| (in dollars) | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 |
|----------------|-------------|-------------|-------------|-------------|-------------|
| FF Revenue | \$227,900 | \$322,100 | \$341,400 | \$361,900 | \$383,600 |
| GF Expenditure | (\$227,900) | (\$322,100) | (\$341,400) | (\$361,900) | (\$383,600) |
| FF Expenditure | \$227,900 | \$322,100 | \$341,400 | \$361,900 | \$383,600 |
| Net Effect | \$227,900 | \$322,100 | \$341,400 | \$361,900 | \$383,600 |

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

Local Effect: Minimal. Some jurisdictions provide most of the medication to inmates through samples, at no cost to the correctional facility. The extent to which this bill affects the future considerations or filings of liability lawsuits against a county or local correctional facility cannot be reliably predicted.

Small Business Effect: DPSCS has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill authorizes DPSCS and local correctional facilities, if adopting a policy of providing medication or prescriptions for chronic or acute medical conditions, to issue nonnarcotic medication and prescriptions to inmates as a component of the inmate release process, provided that the treating physician determines that the released inmate's possession of the medication in the prescribed quantity is in the inmate's best interest and will not constitute a danger to the inmate. The bill also clarifies that the medication must be dispensed by a physician, dentist, podiatrist, or nurse practitioner authorized by law to dispense medications.

The bill also grants immunity from liability for all employees or agents of DPSCS or a local correctional facility, including a physician or corporate entity providing medical services to inmates, for the issuance or prescription of medication to an inmate upon the inmate's release. This immunity applies notwithstanding that the released inmate is no longer under the care or supervision of the prescribing physician and may be without medical supervision for the period for which the medication has been administered.

Current Law: Under the Correctional Services Article, DPSCS must provide an inmate who has been sentenced to an incarceration term with the Division of Correction and who has been diagnosed with a mental illness with access to a 30-day supply of medication for the mental illness upon release of the inmate.

A 30-day supply of a mental health medication may only be provided if the treating physician determines that the released inmate's possession of the medication in the prescribed quantity is in the inmate's best interest and will not constitute a danger to the inmate. Immunity from liability is granted for all employees or agents of DPSCS or a local correctional facility, including a physician or corporate entity providing medical services to inmates, for the issuance or prescription of medication to an inmate upon the inmate's release. This immunity applies notwithstanding that the released inmate is no longer under the care or supervision of the prescribing physician and may be without medical supervision for the period for which the medication has been administered. DPSCS may now issue medications for chronic or acute medical conditions to prerelease inmates, but without a limitation on liability as provided under the bill.

A managing official of a local correctional facility is responsible for the safekeeping, care, and feeding of inmates in the custody of the facility, until the inmate is discharged, released, or withdrawn from the facility. An injured, sick, or disabled inmate in a local correctional facility has to reimburse the county for medical expenses and provide any information regarding health coverage or Medicaid eligibility. However, inmates are not eligible to receive Medicaid or Pharmacy Assistance benefits during incarceration. In addition to obtaining any reimbursement, each county has to establish a fee of up to \$4

for each visit by an inmate to an institutional medical unit or noninstitutional physician, dentist, or optometrist. A county or managing official is not responsible for payment for services or treatment rendered to an inmate as a result of admission to a State facility for individuals who have mental disorders.

Chapter 7 of the 2007 special session expanded Medicaid eligibility under the State's Primary Adult Care Program (PAC), to parents, caretaker relatives, and childless adults with incomes up to 116% (federal poverty guidelines) FPG effective July 1, 2008. During the first year of the expansion, approximately 48,000 parents enrolled. While parents and caretaker relatives receive full Medicaid benefits, childless adults receive primary care, pharmacy, and limited mental health services through a § 1115 demonstration waiver program, PAC. Beginning in January 2010, PAC enrollees will also receive substance abuse treatment and emergency services. Extension of full Medicaid benefits to this population has been delayed due to lower-than-anticipated State revenues. An estimated 35,000 childless adults are currently enrolled in PAC. Under Medicaid/PAC, costs are typically shared on a 50/50 basis between the State and the federal government.

The Department of Human Resources is the State agency charged with handling Medicaid applications. However, PAC applications are handled directly by the Department of Health and Mental Hygiene. Most released inmates seek public medical assistance via PAC.

Background: According to DPSCS, physicians are currently reluctant to issue medications or prescribe medications for chronic or acute medical conditions to an inmate who will not be under any identified doctor's care following release. The immunity from liability provided under the bill for any nonnarcotic medication already applies to physicians for mental health medications being provided to inmates being released from custody.

Many inmates being released have acute or chronic medical conditions such as diabetes, hypertension, and cardiac disease which require daily medication. State and local governments pay the full cost of medications to incarcerated persons. Upon release into the community, the federal government picks up 50% of the cost of pharmacy assistance. Released inmates, however, often have an adjustment period in the community prior to reconnecting with many services, including public health services. Currently, DPSCS is attempting to issue 30 days worth of medication prior to an inmate's release. However, under federal law, this does not qualify for Federal Financial Participation assistance (including Medicaid and PAC) because persons still incarcerated do not qualify.

Under this bill, DPSCS believes that physicians working under contract to State correctional facilities would be more inclined to issue 30-day prescriptions in addition to

the issuance of one week's worth of the medication upon release. Such a prescription would qualify for federal subsidy. Costs for medications purchased under Medicaid may be less than is currently paid by DPSCS for the same medications.

Exhibit 1 shows the approximate number of monthly and annual discharges from DOC facilities requiring nonmental health supplies of medications – usually for up to 30 days. Most of these medications are believed to be in connection with treatments for HIV.

Exhibit 1
Calendar 2009 – Nonmental Health Discharge Medications

| | <u>Number of Patients</u> | <u>Number of Medications</u> | <u>Number of Discharge Rx's per Patient</u> | <u>Expenditure</u> | <u>Avg. Cost Per Discharge Rx</u> |
|----------------------|---------------------------|------------------------------|---|--------------------|-----------------------------------|
| Monthly Avg. | 300 | 927 | 3.09 | \$67,513 | \$72.83 |
| Calendar Year Totals | 3,600 | 11,124 | 3.09 | \$810,156 | \$72.83 |

State Fiscal Effect: General fund expenditures decrease by \$227,900 in fiscal 2011 and \$322,100 beginning in fiscal 2012. Federal fund revenues and expenditures increase by a commensurate amount. The reduction in general fund expenditures reflect a funding shift from State general funds to federal funds for approximately 50% of the cost for nonnarcotic medications and prescriptions for such medications that are provided to inmates as a component of the inmate release process.

Medication and Prescription Costs Shift from DPSCS to Medicaid

Under the bill, DPSCS expects to reduce its costs for medications by supplying a prerelease inmate with only 7 days of medication and having prescriptions written by a medical contractor for an additional 21 to 23 days. This will reduce the department's costs for such medication to \$16,900 a month or \$202,500 annually, representing a general fund savings of \$607,700 per year. Due to the bill's October 1, 2010 effective date, the cost savings in fiscal 2011 is estimated at \$455,775.

Since upon release inmates are eligible for Medicaid, the State will not recognize the full DPSCS cost savings, since State expenditures under the Medicaid program is likely to increase. Assuming that a released inmate's application for Medicaid is approved, State general fund expenditures for Medicaid would increase by \$227,888 in fiscal 2011 with the federal government covering the remainder. **Exhibit 2** shows the cost shift for inmate

medication and prescriptions resulting from the bill's provisions and the net effect on State general fund expenditures.

Exhibit 2
Net Effect on State General Fund Expenditures
Fiscal 2011-2015

| | <u>FY 2011</u> | <u>FY 2012</u> | <u>FY 2013</u> | <u>FY 2014</u> | <u>FY 2015</u> |
|-----------------------|----------------|----------------|----------------|----------------|----------------|
| DPSCS | (\$455,800) | (\$644,200) | (\$682,800) | (\$723,800) | (\$767,200) |
| Medicaid ¹ | 227,900 | 322,100 | 341,400 | 361,900 | 383,600 |
| Net Effect | (\$227,900) | (\$322,100) | (\$341,400) | (\$361,900) | (\$383,600) |

¹Represents only the State general fund portion of Medicaid expenditures. The federal government share equals this amount.

Since the Medicaid program has the ability to purchase medications at a substantially reduced cost level, this shift of costs to Medicaid would be somewhat less than the full current cost to DPSCS, depending on the specific medications sought. All prescription medication costs are anticipated to grow, under current reimbursement formulae, by about 6% annually.

Local Fiscal Effect: It is not known how many jurisdictions have or plan to adopt a policy of providing medication or prescriptions for chronic or acute medical conditions. Both Charles and Frederick counties report no fiscal impact as a result of the bill. Frederick County advises that the bill's limitation of liability could be of positive future benefit to the county.

Frederick County's current policy is to release inmates with nonnarcotic medications that have been prescribed by a physician. All of its policies are in compliance with the Maryland Commission on Correctional Standards and with the National Commission on Correctional Health Care. DPSCS believes that most jurisdictions will also be able to save costs via the issuance of prescriptions rather than the actual supply of the medications.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Charles and Frederick counties, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - January 13, 2010
ncs/hlb Revised - Senate Third Reader - March 25, 2010

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Correctional Services – Medication for Chronic or Acute Medical Condition – Waiver of Liability

BILL NUMBER: SB 86

PREPARED BY: Department of Public Safety and Correctional Services

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.