Department of Legislative Services

Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 429 (Senators Kelley and Conway)
Finance Health and Government Operations

Maryland Medical Assistance Program - Medical Eligibility for Nursing Facility Level of Care - Report

This bill requires the Department of Health and Mental Hygiene (DHMH) to report to the Senate Finance Committee, the House Health and Government Operations Committee, and the Medicaid Advisory Committee (MAC) at least 90 days prior to making any change to medical eligibility for Medicaid long-term care services, including nursing facility services, home- and community-based waiver services, and other services that require nursing facility level of care. DHMH must also discuss the report, which must include information specified in the bill, at a meeting of MAC.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing governmental resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Under current State policy (Maryland Medical Assistance Program *Nursing Home Transmittal No. 213*, *Hospital Transmittal No. 200*, and *Medical Day Care Transmittal No. 61*, effective July 1, 2008), Medicaid nursing facility services are services provided to individuals who, because of their mental or physical condition,

require (1) skilled nursing care and related services; (2) rehabilitation services; or (3) on a regular basis, health-related services above the level of room and board. Skilled nursing care and rehabilitation services are ordered by a physician and require the skills of technical or professional health care personnel on a daily basis. Health-related services above the level of room and board are defined as:

- care of an individual who requires hands-on assistance with two or more activities of daily living (ADLs) as a result of a current medical condition or disability;

- supervision of an individual's performance of two or more ADLs for an individual with cognitive deficits as indicated by a score of 15 or less on the Folstein Mini-Mental Status Evaluation, and who is in need of assistance with at least three instrumental activities of daily living; or

- supervision of an individual's performance of two or more ADLs combined with the need for supervision/redirection for an individual exhibiting at least two of the following: wandering several times a day, hallucinations/delusions at least weekly, aggressive/abusive behavior several times a week, disruptive/socially inappropriate behavior several times a week, and/or self-injurous behavior several times a month.

Background: The nursing facility level of care standard is the medical eligibility standard that individuals must meet in order to receive nursing home services through Medicaid. This standard is also linked to the eligibility of most home- and community-based waiver programs, the Program of All-Inclusive Care for the Elderly (PACE), and medical day care services. In 2008, DHMH was prompted to alter its nursing facility level of care standard in response to the final ruling in the case of *Ida Brown v. Department of Health and Mental Hygiene.*

On July 1, 2008, DHMH changed its nursing facility level of care standard to allow services to be covered for a broader range of individuals who have cognitive, functional, and behavioral needs. The amended criteria removed the requirement that an individual must require the direct involvement of a licensed health care professional to meet the nursing facility level of care standard.

DHMH projected that the impact of the change in the nursing facility level of care standard would be realized in Medicaid payment of medical day care services and nursing facility services, since other home- and community-based services waiver programs are operating at capacity. According to a July 2009 DHMH report, enrollment in medical day care services increased by 17.4% in fiscal 2009 and the number of individuals denied such services due to level of care at the time of annual recertification

dropped from 6.6% to 2.1%. With respect to nursing home services, level of care denials at initial application declined from 324 in fiscal 2008 to 190 (1.2% of applications) in fiscal 2009. Level of care denials for initial applications were also significantly reduced from fiscal 2008 to 2009 in the Older Adults Waiver, the Living at Home Waiver, and the PACE program.

Ida Brown v. Department of Health and Mental Hygiene: In April 2005, Ida Brown applied for home- and community-based services under the Older Adults Waiver and was denied services due to DHMH's determination that she did not satisfy the standard for medical eligibility. The denial was upheld by the Office of Administrative Hearings but was reversed by the Circuit Court for Baltimore City. On appeal, the Court of Special Appeals held in *Ida Brown v. Department of Health and Mental Hygiene* that Maryland's medical eligibility standard for nursing facility level of care was more restrictive than the federal definition. In November 2008, the Court of Appeals affirmed the decision of the Court of Special Appeals.

MAC is composed of up to 25 members, the majority of whom must be enrollees or enrollee advocates. MAC meets monthly to advise DHMH on the implementation, operation, and evaluation of Medicaid managed care programs as well as review and make recommendations on a variety of health care delivery and quality of care issues.

Additional Information

Prior Introductions: None.

Cross File: HB 278 (Delegate Hubbard) – Health and Government Operations.

Information Source(s): Department of Human Resources, Department of Health and Mental Hygiene, Department of Legislative Services

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