HB 846

Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 846 (Delegate Hixson, *et al.*)
Health and Government Operations

Maryland Medical Assistance Program - Viatical Settlement Contracts - Long-Term Care Services

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This bill authorizes an individual (viator) who owns a life insurance policy with a face amount of more than $10,000 to enter into a viatical settlement contract in exchange for payments to a health care provider for long-term care services. The proceeds of a viatical settlement contract must be used to pay for long-term care services and may not be considered a resource or asset in determining an individual's eligibility for Medicaid. However, no State or federal funds may be used to pay for Medicaid long-term care services for an individual until all viatical settlement proceeds are expended.

Fiscal Summary

State Effect: Special fund expenditures for the Maryland Insurance Administration (MIA) increase by $117,000 in FY 2015 for additional personnel to implement the bill. As no form and filing fee is authorized under the bill, special fund revenues for MIA are not affected. Future years reflect annualization and inflation. Any additional workload on Medicaid to alter Medicaid enrollment applications for long-term care services can be absorbed within existing budgeted resources. To the extent the bill allows individuals to defer Medicaid eligibility by using private assets for long-term care services, Medicaid expenditures (50% general funds, 50% federal funds) may decline in future years. Federal fund matching revenues decline accordingly.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
FF Revenue	(-)	(-)	(-)	(-)	(-)
SF Expenditure	$117,000	$148,600	$155,600	$162,900	$170,500
GF/FF Exp.	(-)	(-)	(-)	(-)	(-)
Net Effect	($117,000)	($148,600)	($155,600)	($162,900)	($170,500)

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

Local Effect: None.

Small Business Effect: Minimal. Small business long-term care providers may benefit from additional revenues to the extent use of viatical settlement contracts for long-term care services increases under the bill.

Analysis

Bill Summary: The Department of Health and Mental Hygiene (DHMH) must include written notice of the option to enter into a viatical settlement contract in any enrollment application for Medicaid long-term care services. DHMH must adopt regulations and, if necessary, seek a waiver or authorization from the federal Centers for Medicare and Medicaid Services to implement the bill.

A viatical settlement contract must specify that (1) the lesser of 5% of the face amount of the life insurance policy that is the subject of the contract or $5,000 is reserved and payable, for final expenses, to the viator's estate or a named beneficiary on the death of the insured under the policy and (2) the balance of the proceeds of the contract remaining at the death of the insured must be paid to the viator's estate or a named beneficiary. A viatical settlement provider must hold all proceeds of a contract in an irrevocable State or federally insured account for the benefit of the recipient of long-term care services or for payment as otherwise required under the bill. A viatical settlement provider must pay a claim from the funds held in an account as required under the bill.

Only a recipient of long-term care services for whose benefit a viator enters into a viatical settlement contract may choose the provider and type of services provided to the recipient and paid for out of the account. Any attempt to require the recipient of long-term care services to choose a specific provider or specific type of services is an unfair method of competition or an unfair or deceptive act or practice under the Insurance Article.

A viatical settlement provider that enters into a contract with a viator must maintain (1) a surety bond executed and issued by an insurer authorized to issue surety bonds in the State; (2) a policy of errors and omissions insurance; or (3) a $500,000 deposit in any combination of cash, certificates of deposit, or securities.

A claim by a viator, a viator's estate, a named beneficiary, or any other person with respect to a viatical settlement contract may not exceed the face amount of the policy, less the proceeds paid under the contract and the total amount of premiums paid after entering into the contract.

Viatical settlement contracts authorized under the bill are subject to Title 8, Subtitle 6 of the Insurance Article except to the extent those provisions conflict with the bill. A viatical settlement provider must file with the Insurance Commissioner, for review and approval, any contract forms used for long-term care services and any related advertisements used by the viatical settlement provider. The Insurance Commissioner must conduct periodic examinations of each viatical settlement provider with respect to any viatical settlement contracts used for Medicaid long-term care services.

Violation of the bill's provisions is defined as an unfair method of competition and an unfair or deceptive practice in the business of insurance.

Current Law: A "viatical settlement contract" means a written agreement that establishes the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the policy, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any part of the policy. A "viatical settlement provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract. A "viator" is the owner or certificate holder of a policy who enters or seeks to enter into a viatical settlement contract.

A person must register with the Insurance Commissioner before acting or representing as a viatical settlement provider in the State. Only an individual who is a viatical settlement broker (and employees and agents of a registered viatical settlement provider or broker) may negotiate viatical settlement contracts.

Under 42 USC 1382(a), in determining the resources of an individual (or eligible spouse) for Medicaid, the cash surrender value of any life insurance policy greater than $1,500 must be taken into account. There is no exception for proceeds of viatical settlements to be exempt as assets. Individuals may be eligible for Medicaid spend-down if their income exceeds Medicaid eligibility limits but their medical expenses are equal to or greater than the portion of their income that exceeds eligibility limits. Individuals eligible under Medicaid spend-down are only eligible for a limited time and must pay some of their own medical bills.

Under the Qualified State Long-Term Care Insurance Partnership program, an individual who is covered under a long-term care policy approved for the program and satisfies other requirements may exclude the amount of benefits paid under the long-term care policy from the calculation of the individual's resources for purposes of Medicaid eligibility.

Background: Viatical settlements allow an individual to sell his or her life insurance policy to a third party. Generally, an individual may only use a viatical settlement if he or she is terminally ill with a life expectancy of less than five years. A viatical settlement provider pays the individual a percentage of the death benefit on the life insurance policy, based on the individual's life expectancy, usually 60% to 90% of the policy's face value. The viatical settlement provider then owns the policy and is its beneficiary. As a result, the individual receives a portion of the policy's face value, and the viatical company receives the full death benefit after the individual dies.

A life insurance conversion (or life care funding) is the sale of a life insurance policy to a third party in exchange for a defined amount of long-term care services. Once the policy is converted into an irrevocable long-term care benefit account, the policy owner is no longer required to pay any premiums on the life insurance policy, and a monthly amount is paid directly to the long-term care provider that the policy owner selects. This type of conversion is intended to allow participants to gain Medicaid eligibility under the spend-down category. If the individual dies before the defined amount of long-term care services has been exhausted, any remaining monies go to a beneficiary designated by the individual. Approximately 500 life insurance conversions occurred nationally in 2013.

Life insurance conversions are available in all states; however, the specific provisions of this bill have only been adopted, to date, in Texas. Similar legislation has been introduced in California, Florida, Kentucky, Louisiana, Maine, New Jersey, and New York.

State Expenditures: The bill requires viatical settlement providers to file any viatical settlement contract forms used for long-term care services and any related advertisements with MIA for review and approval. Furthermore, MIA must conduct periodic examinations of each viatical settlement provider with respect to any viatical settlement contracts used for Medicaid long-term care services. Viatical settlement providers are only required to register with MIA under current law. No review of forms, contracts, or advertisements or market conduct examinations are currently conducted. Thus, MIA advises that two new full-time positions would be required. The Department of Legislative Services concurs that additional staff is needed to implement the bill.

Thus, special fund expenditures for MIA increase by $117,037 in fiscal 2015, which accounts for the bill's October 1, 2014 effective date. This estimate reflects the cost of hiring two additional full-time employees to implement the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	$107,427
One-time Start-up Costs	8,740
Ongoing Operating Expenses	870
Total FY 2015 State Expenditures	**$117,037**

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. As no rate and form filing fee is authorized under the bill, MIA would be unable to collect special fund revenues to offset these expenditures.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): U.S. Department of Health and Human Services, American Elder Care Research Organization, Life Care Funding, Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

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mc/ljm

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