

Department of Legislative Services  
Maryland General Assembly  
2015 Session

FISCAL AND POLICY NOTE

House Bill 24 (Delegate McConkey)  
Health and Government Operations

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Estates and Trusts - Allowance for Funeral Expenses

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This bill increases the allowance for funeral expenses that can be paid from a regular estate from \$10,000 to \$20,000. The bill applies only prospectively.

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Fiscal Summary

**State Effect:** General fund revenues decrease to the extent that the personal representative must pay increased funeral expenses rather than State taxes owed by the decedent. The Department of Mental Health and Hygiene's (DHMH) general and federal fund revenues decrease to the extent that less estate funds are available to Medicaid reimbursement claims against the estate of a deceased Medicaid recipient due to increased funeral expenses. Expenditures are not affected.

**Local Effect:** Local revenues decrease to the extent that the personal representative must pay increased funeral expenses rather than local taxes owed by the decedent.

**Small Business Effect:** Potential meaningful.

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Analysis

**Current Law:** A personal representative must pay the funeral expenses of the decedent within six months of appointment. If the total assets of the decedent are insufficient to pay all claims against the estate in full, the personal representative must make payment in the following order:

1. fees due to the register of wills;
2. costs and expenses of estate administration;
3. funeral expenses;

4. compensation of personal representatives and commissions of licensed real estate brokers;
5. family allowance;
6. taxes due by the decedent;
7. reasonable medical, hospital, and nursing expenses of the last illness of the decedent;
8. rent payable by the decedent for not more than three months in arrears;
9. wages, salaries, or commission for services performed for the decedent within three months prior to the death of the decedent;
10. assistance paid under the Public Assistance to Adults Program; and
11. all other claims.

Funeral expenses include the costs of a funeral, a burial, a cremation, a disposition of the decedent's remains, a memorial, a memorial service, food and beverage related to bringing together the decedent's family and friends for a wake or prefuneral or postfuneral gathering or meal, and any other reasonable expenses authorized by the decedent's will.

Funeral expenses may be paid from the assets of an estate in the discretion of the court according to the condition and circumstances of the decedent. The allowance for funeral expenses may not exceed \$10,000 for small and regular estates. An estate may be administered as a small estate if the decedent's estate, as of the date of death of the decedent, had a value of \$50,000 or less, or, if the surviving spouse is the sole legatee or heir and the decedent's estate had a value of \$100,000 or less.

Under specified circumstances, DHMH may file a claim against the estate of a deceased Medicaid recipient for the medical services it provided the recipient. Medicaid is treated as "all other claims," or as a general creditor. Claims of general creditors are the lowest priority among those for which a personal representative must make payment if the total assets of the decedent are insufficient to pay all claims against the estate in full.

**Background:** Chapters 226 and 227 of 2012 increased the maximum amount that a court may allow for funeral expenses paid from a small estate from \$5,000 to \$10,000. The Acts also specified expenses that are included within the definition of "funeral expenses" under provisions of the Estates and Trusts Article governing the payment of funeral expenses of a decedent from the assets of the decedent's estate. Chapters 62 and 63 of 2012 increased the eligibility thresholds for small estate administration from \$30,000 to \$50,000, for estates in general, and from \$50,000 to \$100,000 for an estate for which the surviving spouse is the sole legatee or heir of the decedent.

**Small Business Effect:** Small businesses associated with funeral services may benefit from the bill to the extent that increased funeral expenses are incurred; however, small businesses with claims that have lesser priority than claims related to funeral expenses may

see an adverse impact. Businesses that may see an adverse impact include, but are not limited to: attorneys, real estate brokers, health care practitioners, nursing homes, landlords, and contractors.

**Additional Information:** DHMH advises that, unlike recoveries from subrogation claims that are considered special fund revenues, recoveries from liens against the estate of a deceased Medicaid recipient for the medical services it provided the recipient are, depending on the circumstances, considered general and/or federal fund revenues.

The Department of Human Resources advises that it does not file claims for recovery against the estate of a decedent who received assistance paid under the Public Assistance to Adults Program.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Human Resources, Department of Mental Health and Hygiene, Judiciary (Administrative Office of the Courts), Register of Wills, Department of Legislative Services

**Fiscal Note History:** First Reader - February 9, 2015  
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