SB 1002

Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1002 (Senator Pinsky, *et al.*)
Finance

Public Health - Healthy Maryland Program - Establishment (Healthy Maryland Act of 2018)

This bill establishes the Healthy Maryland Program as an instrumentality of the State, which by January 1, 2020, must provide comprehensive universal single-payer health care coverage for residents of the State. The program would replace Medicaid, the Maryland Children's Health Program (MCHP), Medicare, the federal Patient Protection and Affordable Care Act (ACA), and any other federal programs. The bill expresses the intent of the General Assembly that legislation be enacted to develop a revenue plan for the program, including payroll premiums. **The bill takes effect July 1, 2018.**

Fiscal Summary

State Effect: Significant expenditure reductions for the Maryland Department of Health, the Maryland Health Benefit Exchange (MHBE), and the State Employee and Retiree Health and Welfare Benefits Program. The Governor's proposed FY 2019 budget includes more than $13.2 billion for health care. Significant but indeterminate revenues and expenditures for the Healthy Maryland Trust Fund beginning in FY 2020. In 2018, Maryland residents are projected to spend $59.3 billion on health care costs.

Local Effect: Significant reduction in local health department expenditures as well as local jurisdiction employee benefits expenditures. However, local governments will be subject to any payroll premium. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Bill Summary: The Healthy Maryland Program is established as an instrumentality of the State and a unit of State government. The program is subject to the Public Ethics Law, the Public Information Act, the Open Meetings Law, provisions of law related to major State information technology projects, the policies and procedures of units exempt from State procurement law except the minority business enterprise provisions, the Administrative Procedure Act, the Maryland Tort Claims Act, and State whistleblower protection laws.

By January 1, 2020, the program must provide (1) comprehensive universal single-payer health care services for all residents of the State; (2) a health care cost control system for the benefit of all residents; (3) choice and access to "health care coordinators" and health care providers to all residents; and (4) broad-based public financing of health care services for all residents. Healthy Maryland must also establish mechanisms to (1) enable health care providers to collectively negotiate with Healthy Maryland regarding any matter relating to Healthy Maryland, including rates and payment methodologies; (2) ensure transparency and accountability to the public; and (3) provide for the collection of data to promote transparency, assess adherence to patient care standards, and compare patient outcomes and review utilization of health care services paid for by the program.

Healthy Maryland Board

Subject to any limitations under the bill or other applicable law, the Healthy Maryland Board must have all powers necessary or convenient to carry out the functions authorized by the ACA and consistent with the purposes of Healthy Maryland.

The bill establishes extensive procedures and criteria for the selection and appointment of members of the board. A member of the board may not receive compensation as a member but is entitled to a per diem, as provided in the State budget, for attending scheduled meetings and reimbursement for expenses under the standard State travel regulations, as provided in the State budget. The board is subject to financial disclosures in addition to those required under the Public Ethics Law and may not have been employed by certain health care entities in the two years preceding appointment.

The board must appoint an Executive Director of Healthy Maryland to serve at the pleasure of the board. Under the direction of the board, the executive director must (1) be the chief administrative officer of Healthy Maryland; (2) direct, organize, administer, and manage the operations of Healthy Maryland and the board; and (3) perform all duties necessary to carry out the bill, other applicable State laws and regulations, and the ACA.

The board may do all things necessary and convenient to carry out the powers granted by the ACA and consistent with the purposes of the program, including adopting bylaws,

rules, policies, and regulations to carry out the bill; entering into contracts or other legal instruments; applying for and accepting donations and grants; and maintaining an office. The board must ensure that any entity under contract with the program complies with the requirements of the bill.

The board must, among other specified duties, (1) consult with and solicit input from the Healthy Maryland Public Advisory Committee; (2) promote the public understanding and awareness of Healthy Maryland; (3) avoid jeopardizing federal financial participation in programs incorporated into Healthy Maryland; (4) ensure adequate funding for Healthy Maryland; (5) evaluate requests for capital expenses; (6) approve the benefits provided by Healthy Maryland; and (7) evaluate the performance of Healthy Maryland.

The board must provide grants from the Healthy Maryland Trust Fund or funds otherwise appropriated for health planning to the health planning programs established by the Maryland Health Care Commission to support the operation of those programs. The board must also provide funds from the Healthy Maryland Trust Fund or funds otherwise appropriated for the purpose of worker retraining and job transition assistance to the Department of Labor, Licensing and Regulation for specified programs.

Healthy Maryland Public Advisory Committee

A 22-member Healthy Maryland Public Advisory Committee is established, consisting of members with specified expertise and consumers. The advisory committee must advise the board on all matters of policy related to Healthy Maryland. The advisory committee is required to meet at least six times per year in a place convenient to the public. A member of the advisory committee may not receive compensation but is entitled to a per diem for attending scheduled meetings and reimbursement for expenses under the standard State travel regulations, as provided in the State budget. Members must adhere strictly to specified conflict of interest provisions.

Required Reports and Proposals

By December 1, 2018, the board must (1) submit to the Governor and the General Assembly a report on any changes to the laws of the State and units of State government necessary to effectively carry out the bill and (2) apply for all waivers from the provisions of the federal Employment Retirement Income Security Act that are necessary to ensure the participation of all residents of the State in Healthy Maryland.

By July 1, 2020, the board must *develop* a proposal for the provision by the program of long-term services and supports coverage, including the development of a proposal for its funding. By July 1, 2023, the board must *adopt* such a proposal.

The board must develop proposals for accommodating employer retiree health benefits for individuals who have been members of Healthy Maryland but live as retirees outside the State and for coverage of health care services currently covered under the State workers' compensation system.

Eligibility

Each resident of the State is eligible to enroll as a member of Healthy Maryland and receive benefits for covered health care services. Members may not be required to pay any fee, payment, or other charge for enrolling in or being a member.

A participating health care provider or participating care coordinator may not (1) require members to pay any premium, copayment, coinsurance, deductible, or any other form of cost sharing for any covered benefits; (2) use preexisting medical conditions to determine the eligibility of a member to receive benefits for covered services; or (3) refuse to provide health care services to a member on the basis of race, color, religion or creed, sex, age, ancestry or national origin, marital status, mental or physical disability, sexual orientation, gender identity or expression, citizenship, immigration status, primary language, medical condition, genetic information, familial status, military or veteran status, geography, or source of income.

A college, university, or other institution of higher education in the State may purchase coverage for a student, or a student's dependent, who is not a resident of the State.

A State resident who is employed outside the State may choose to receive health insurance benefits through the resident's employer and opt out of participation in Healthy Maryland.

Enrollment Period

The board must determine when individuals may begin enrolling in Healthy Maryland. The implementation period must (1) begin on the date that individuals may begin enrolling and (2) end on a date determined by the board. The board must adopt rules or regulations on State residence requirements under the program.

Each board member must enroll as a member of Healthy Maryland after the end of the implementation period.

Benefits

Covered health care benefits under Healthy Maryland must include all medical care provided to a member that is medically necessary as determined by the member's treating physician in accordance with the program standards established under the bill and by the

board. Covered health care benefits for members include specified services and equipment; health care and long-term services and supports covered under Medicaid or MCHP on January 1, 2017; all health care services for which coverage is required by or under MCHP, Medicaid, Medicare, and carriers; all essential health benefits (EHBs) mandated by the ACA as of January 1, 2017; and any health care services added to Healthy Maryland by the board.

The board must evaluate, on a regular basis, benefits covered under the program. As part of the periodic evaluation, the board is required to consult specified entities, institutions, and officials.

Delivery of Care

The bill establishes basic criteria for qualification as a provider under the program and authorizes a qualified provider to deliver care to a member. Care coordinators are required to provide care coordination to members. A care coordinator may be the member's primary care provider or the member's provider of primary gynecological care. At the option of a member with a chronic condition, the care coordinator may be certain licensed health care facilities or an approved nonprofit or governmental entity. All members must enroll with a care coordinator before receiving health care services under the program. Generally, Healthy Maryland may not reimburse a health care provider for services provided to a member unless the member is enrolled with a care coordinator at the time the health care service is provided.

Payment for Health Care Services and Care Coordination

The board must adopt regulations regarding contracting and establishing payment methodologies for covered health care services and care coordination provided to members. Payment rates must be reasonable and reasonably related to the cost of efficiently providing the health care service and ensuring an adequate and accessible supply of health care services.

Except for care coordination, health care services provided to members must be paid for on a fee-for-service basis, unless and until the board establishes another payment methodology. However, integrated health care delivery systems, essential community providers, and group medical practices that provide comprehensive and coordinated services must be reimbursed on the basis of a capitated or noncapitated system operating budget.

A participating health care provider may not charge any rate in excess of the payment rate established under the bill for any health care service provided to a member of Healthy Maryland.

Healthy Maryland may adopt, by regulation, payment methodologies for the payment of capital-related expenses for specifically identified capital expenditures incurred by a health care facility.

Healthy Maryland must engage in good faith negotiations with specified health care provider representatives on rates of payment and payment methodologies.

The board must establish a prescription drug formulary and implement rules regarding the use of off-formulary medications.

Program Standards

Healthy Maryland must have a single standard of safe and therapeutic health care for all residents of the State. The board must establish requirements and standards, by regulation, for the program, care coordinators, and health care providers that are consistent with the bill and the applicable professional practice and licensure standards for health care providers.

Payroll Premium and Credit

The bill expresses the intent of the General Assembly that additional legislation be enacted to develop a revenue plan for the program that includes payroll premiums. If a payroll premium is enacted, the bill specifies that, if a State resident is employed outside the State by an employer subject to State law, the employer and the employee must pay any payroll premium adopted under the bill as if the employment were in the State. If a State resident is employed outside the State by an employer that is not subject to State law, *either* (1) the employer and the employee must voluntarily pay any payroll premium adopted under the bill as if the employment were in the State *or* (2) the employee must pay the payroll premium as if the employee were self-employed.

Any payroll premium applies to (1) an out-of-state resident employed in the State and (2) an out-of-state resident self-employed in the State.

A State resident who is employed outside the State may choose to receive health insurance benefits through the resident's employer and opt out of participation in Healthy Maryland. If an out-of-state resident is employed in the State, the out-of-state resident and the employer may take a credit against any payroll premium that the individual or the employer would otherwise pay as to that individual. The credit is for amounts spent on health benefits for the individual that would otherwise be covered by Healthy Maryland if that individual were a member. The credit must be distributed between the individual and the employer in the same proportion as spending by each for the health benefit. An employer may apply its respective portion of the credit to its portion of the payroll premium.

If an out-of-state resident is self-employed in the State, the individual may take a credit against any payroll premium that the individual would otherwise pay. The credit is for amounts the individual spends on health benefits that would otherwise be covered by Healthy Maryland if that individual were a member. A credit taken by an individual is limited to spending for health benefits. An individual may not take a credit for out-of-pocket health spending. A credit is available regardless of the cost or comprehensiveness of the health benefit and the form of the health benefit. An employer or individual may take a credit only against payroll premiums and may not apply any health benefit spending in excess of the payroll premium to other tax liability.

Funding

The board must seek all federal waivers and other federal approvals and arrangements and submit Medicaid State Plan amendments as necessary to operate Healthy Maryland consistent with the bill. By December 1, 2018, the board must apply to the U.S. Secretary of Health and Human Services or other appropriate federal official for all waivers of requirements and make other arrangements necessary to (1) enable all members to receive all benefits through Healthy Maryland; (2) enable the State to implement the bill; (3) allow the State to receive and deposit all federal payments under those programs to the credit of the Healthy Maryland Trust Fund; and (4) use funds deposited in the Healthy Maryland Trust Fund for Healthy Maryland and other provisions under the bill.

To the fullest extent possible, the board must negotiate arrangements with the federal government to ensure that federal payments are paid to Healthy Maryland in place of federal funding of, or tax benefits for, federally matched public health programs or federal health programs. The board may waive or modify the applicability of any provisions of the bill relating to any federally matched public health program or Medicare, as necessary, to implement any waiver arrangement under the bill, or maximize federal benefits.

Healthy Maryland Trust Fund

The bill establishes a Healthy Maryland Trust Fund. The purpose of the fund is to implement Healthy Maryland under the bill. The fund is a special, nonlapsing fund that consists of:

- money appropriated in the State budget to the fund;
- money from any payroll premium adopted under the bill;
- money transferred to the fund that is attributable to State and federal financial participation in specified federal programs;
- federal payments received by the State as a result of any waiver of requirements granted or other arrangements;

- federal and State funds for purposes of the provision of services authorized under Title XX of the federal Social Security Act that would otherwise be covered under Healthy Maryland;
- money from other specified federal programs;
- State and local funds appropriated for health care services and benefits that are provided under the bill;
- the amounts paid by the State that are equivalent to those paid on behalf of residents under Medicare, any federally matched public health program, or the ACA for health benefits that are equivalent to health benefits covered under Healthy Maryland; and
- investment earnings of the fund.

The fund may be used only for Healthy Maryland as established by the bill. Money in the fund may not be transferred to the general fund or a special fund of the State, or any fund of a county or municipality.

Data Collection and Analysis

The board must require and enforce the collection and availability of specified data to promote transparency, assess adherence to patient care standards, compare patient outcomes, and review utilization of health care services paid for by Healthy Maryland. Data collected must be reported to the Health Services Cost Review Commission (HSCRC), and all disclosed data must be made publicly available through a searchable website and HSCRC.

Collective Negotiation with Healthy Maryland

Health care providers may meet and communicate for the purpose of collectively negotiating with Healthy Maryland on any matter relating to Healthy Maryland, including (1) rates of payment for health care services; (2) rates of payment for prescription and nonprescription drugs; and (3) payment methodologies.

Prohibited Acts

Healthy Maryland or any State agency, local agency, or public employee acting on behalf of Healthy Maryland is prohibited from providing or disclosing to anyone any personally identifiable information obtained about an individual, including an individual's religious beliefs, practices, or affiliation; national origin; ethnicity; or immigration status. A law enforcement agency in the State may not use Healthy Maryland funds, facilities, property, equipment, or personnel to investigate, enforce, or assist in the investigation or enforcement of any criminal, civil, or administrative violation or warrant for a violation of

any requirement that individuals register with the federal government or any federal agency based on religion, national origin, ethnicity, or immigration status. The bill establishes other requirements for the use and sharing of data.

A carrier may not offer benefits or cover any services for which coverage is offered to individuals under Healthy Maryland. A carrier that is issued a certificate of authority by the Maryland Insurance Commissioner may offer (1) benefits that do not duplicate the health care services covered by Healthy Maryland; (2) benefits to or for individuals who are employed or self-employed in the State but who are not residents of the State; and (3) benefits during the implementation period to individuals who enrolled or may enroll as members of Healthy Maryland.

Maryland Health Benefit Exchange

The bill repeals provision of current law related to the establishment of the board of trustees of MHBE and the authority of the board, with the approval of the Governor, to appoint the Executive Director of MHBE. The bill also specifies that the Executive Director of Healthy Maryland is to serve as the Executive Director of MHBE, until the exchange ceases to operate.

Current Law/Background: The State provides comprehensive health care coverage through Medicaid and MCHP to eligible individuals. The State also provides comprehensive health care coverage to State employees, retirees, and their eligible dependents through the State Employee and Retiree Health and Welfare Benefits Program.

Medicaid and the Maryland Children's Health Program

Medicaid generally covers children, pregnant women, elderly or disabled individuals, low-income parents, and childless adults. To qualify for Medicaid, applicants must pass certain income and asset tests. Effective January 1, 2014, Medicaid coverage was expanded to persons with household incomes up to 138% of federal poverty guidelines (FPG), as authorized under the ACA. MCHP is Maryland's name for medical assistance for low-income children. MCHP provides all the same services as Medicaid. A premium of about 2% of family income is required of child participants with family incomes above 200% FPG. In fiscal 2018, there are 1.2 million individuals enrolled in Medicaid and approximately 146,400 children enrolled in MCHP.

The Federal Patient Protection and Affordable Care Act

The ACA requires nongrandfathered health plans to cover 10 EHBs, which include items and services in the following categories: (1) ambulatory patient services; (2) emergency services; (3) hospitalization; (4) maternity and newborn care; (5) mental health and

substance use disorder services, including behavioral health treatment; (6) prescription drugs; (7) rehabilitative and habilitative services and devices; (8) laboratory services; (9) preventive and wellness services and chronic disease management; and (10) pediatric services, including dental and vision care.

Under § 31-116 of the Maryland Insurance Article, EHBs must be included in the State benchmark plan and, *not withstanding any other benefits mandated by State law*, must be the benefits required in (1) all individual health benefit plans and health benefit plans offered to small employers (except for grandfathered health plans) offered outside the MHBE and (2) all qualified health plans offered in MHBE.

Single-payer Proposals in Other States

In May 2011, Vermont became the first state to enact legislation to establish a universal, unified, publicly financed single-payer health care system that covers all state residents. The system, Green Mountain Care, was intended to encourage efficiency, lower overhead costs, and incentivize health outcomes. However, in 2014, the state abandoned its plans to implement the program due to administrative and financing issues.

In May 2017, the New York State Assembly passed a bill that would provide universal statewide coverage throughout the state with no out-of-pocket costs or network restrictions. Identified funding sources would be $90 billion in progressive payroll taxes and/or non-earned income tax increases. The bill did not pass the New York State Senate.

In June 2017, the California State Senate passed a bill to create Healthy California, a single health care market for everyone without premiums, copayments, or deductibles. Medical, pharmaceutical, dental, vision, and long-term care services would be provided to all residents (including undocumented immigrants) free of charge. The state would seek to pay providers Medicare rates, and a nine-person panel would administer the program. The bill, which is on hold in the California Assembly, is estimated to cost $400 billion per year and would be funded with $200 billion outside current state and federal spending, a 15% payroll tax, and a 2.3% sales tax.

Universal coverage or single-payer proposals have also been introduced in Florida, Iowa, Pennsylvania, and Minnesota.

State Fiscal Effect: Given the complexity of establishing a comprehensive universal single-payer health care coverage program for the benefit of all Maryland residents, as well as a health care cost control system, there is insufficient information to provide a reliable estimate of the potential cost and savings of the bill at this time.

Additionally, the bill expresses the intent of the General Assembly that legislation be enacted to develop a revenue plan with payroll premiums. These revenues cannot be reliably estimated at this time.

For illustrative purposes only, total personal health care spending in Maryland for 2018 is projected to be $59.3 billion. The Governor's proposed fiscal 2019 budget includes more than $13.2 billion for health care, including $11.6 billion for the Medicaid and MCHP programs alone. Beyond these costs, additional costs would be incurred to provide full coverage to those who are currently uninsured (an estimated 389,000 Marylanders in 2017) and underinsured (as many as 34% of insured individuals). Increased utilization due to lack of any enrollee cost sharing may also result in additional costs.

The Department of Legislative Services (DLS) advises that, under the bill, the cost to provide coverage for federal employees working in Maryland, including those covered under TRICARE, shifts to the State to the extent that those individuals find the Healthy Maryland program to be preferable coverage. However, the federal government would not be contributing toward the cost of these individuals as would other employers.

Further, it is uncertain the extent to which federal advanced premium tax credits (APTCs) would be available to fund the program. In calendar 2018, 121,400 individuals enrolled in MHBE are eligible to receive APTCs to offset the costs of their insurance premiums. The monthly value of APTCs to Maryland residents in January 2018 alone was $63.9 million. Maryland may be able to seek a federal waiver to retain this funding.

DLS notes that, under a single-payer system, there are likely to be both structural and systemic savings through consolidated administration, government negotiated rates with providers and pharmaceutical manufacturers, and a reduction in unnecessary services, service delivery inefficiencies, missed prevention opportunities, and fraud. Other analyses of single-payer proposals have estimated such savings at as much as 18%. However, DLS advises that Maryland's HSCRC already regulates hospital rates, which account for 38.7% of total health care spending in 2018. Thus, Maryland would likely not achieve as much savings as estimated in other states. Furthermore, the bill proposes to provide coverage on a fee-for-service basis with no cost sharing on the part of enrollees. This model is likely to increase utilization, and consequently costs, compared to the current health care system. Ultimately, any potential savings likely accrue over the long term rather than the short term.

Small Business Effect: Small businesses that offer health insurance to their employees experience a reduction in benefit expenditures; however, any savings are offset at least in part by any payroll premium assessed to fund the program. For those small businesses that do not offer health insurance, expenditures increase under a payroll premium.

Additional Comments: The bill is modeled after the Healthy California proposal. In 2017, the University of Massachusetts Amherst's Political Economy Research Institute (PERI) conducted an economic analysis of the Healthy California proposal. The study found that providing full universal coverage would increase overall system costs by 10%, but that a single-payer system could produce savings of 18%. PERI projected that under the Healthy California proposal net health care spending for middle-income families would fall by 2.6% to 9.1% of income. Furthermore, businesses that currently offer health care coverage to their employees would experience a reduction in health care costs as a share of payroll equal to 22% for small firms, 6.8% to 13.4% for medium-sized firms, 5.7% for firms with up to 500 employees, and 0.6% for firms with more than 500 employees.

Additional Information

Prior Introductions: None.

Cross File: HB 1516 (Delegate Barron, *et al.*) - Health and Government Operations.

Information Source(s): U.S. Department of Health and Human Services; *Health Affairs*; University of Massachusetts Amherst Political Economy Research Institute; Department of Budget and Management; Maryland Health Benefit Exchange; Maryland Department of Health; Maryland Insurance Administration; Office of the Comptroller; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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