HB 188

Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 188 (Delegate Reznik, *et al.*)
Health and Government Operations and Economic Matters

Public Health - State-Provided Health Care Benefits

This bill creates an Office of Health Care Coverage within the Maryland Department of Health (MDH) to establish and carry out a new HealthcareMaryland Program. A Health Care Coverage Fund is also established to provide coverage to eligible State residents through the program, which is funded in part by a 10% payroll tax. A HealthcareMaryland Commission is established and must provide recommendations for implementation of the program. **Provisions relating to the new commission take effect July 1, 2020, and terminate June 30, 2023; all other provisions take effect July 1, 2022.**

Fiscal Summary

State Effect: Special fund revenues increase by a significant but indeterminate amount beginning in FY 2023 from the payroll tax and appropriations to the fund. Special fund expenditures increase by $45.7 million beginning in FY 2023 to collect the payroll tax and implement the HealthcareMaryland enrollment system only. Special fund expenditures further increase by a significant but indeterminate amount beginning in FY 2023 to implement the program. State expenditures (all funds) increase significantly beginning in FY 2023 due to imposition of the payroll tax, offset at least in part due to savings from expansion of health care to all citizens.

Local Effect: Local government expenditures increase significantly beginning in FY 2023 due to imposition of the payroll tax. Local revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Office of Health Care Coverage

Beginning July 1, 2022, the Office of Health Care Coverage is established in MDH and is required to (1) enroll in HealthcareMaryland all State residents who do not receive federal benefits through Medicare, TRICARE, plans that are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), or any other federal medical program; (2) contract with managed care organizations (MCOs) to provide program benefits; (3) determine reimbursement rates for MCOs and health care providers; (4) determine the health care benefits and services that will be covered under the program; (5) ensure that individuals who were enrolled in Medicaid prior to enrolling in the program continue to receive the full range of benefits provided under Medicaid; (6) establish and maintain a preferred prescription drug list and negotiate pharmaceutical costs; (7) adjudicate service and fee denial appeals; (8) administer the Health Care Coverage Fund; and (9) collaborate with the Treasurer to disburse payments for the fund.

Any health care provider licensed in Maryland may participate in the program. An MCO may determine the providers who participate in the MCO's network. An MCO participating in the program must maintain a network of providers for serving enrollees that is able to meet geographic requirements determined by the commission. A participating MCO must provide an essential benefits package that is equal to or more comprehensive than the benefits provided under the federal Patient Protection and Affordable Care Act (ACA) and includes specified benefits and any other benefits determined by the commission.

An MCO participating in the program may require cost sharing by enrollees, including copayments and deductibles, in accordance with regulations adopted by the program. Cost sharing may be required only if the MCO demonstrates to the program that the MCO has exhausted all other reasonable methods of obtaining funding. Cost sharing must be scaled according to an individual's income tax bracket. An individual in the lowest income tax bracket may not be subject to cost sharing.

The office must pay an MCO a capitated rate for each enrollee based on the actuarial cost of the MCO's benefits, costs, and usage.

The office must collaborate with the Motor Vehicle Administration (MVA) to (1) identify State residents who are eligible for the program using the driver's license database and (2) contact eligible State residents and provide an opportunity to enroll with an MCO. A State resident who does not enroll with an MCO must be auto-enrolled in a manner that ensures equitable distribution of enrollees among participating MCOs.

The office must collaborate with the Maryland Health Benefit Exchange (MHBE) to enroll State residents in the program and ensure the availability of a web-based program for enrollment that is accessible in health care facilities and offices and by a State resident who does not have a driver's license or State-issued identification card.

Health Care Coverage Fund

Beginning July 1, 2022, a Health Care Coverage Fund is established. The purpose of the fund is to provide health care coverage to eligible State residents through the program. The fund, which is administered by MDH, is a special, nonlapsing fund that is not subject to specified provisions of the State Finance and Procurement Article. The fund consists of:

- money appropriated in the State budget to the fund in an amount at least equal to the annual cost of State personnel health insurance costs as of 2019;
- any revenue received from the payroll tax imposed under the bill;
- any funds available to the State resulting from savings achieved through streamlining, consolidating, or eliminating commissions, programs, or other units of State or local government in establishing the program;
- any savings achieved by the State as a purchaser of pharmaceuticals or through negotiated reimbursement rates;
- interest earnings of the fund; and
- any other money from any other source accepted for the benefit of the fund.

The fund may be used only for any costs associated with the office and carrying out the program, including any administrative expenses. The office must adopt regulations to implement these provisions.

Payroll Tax

Beginning July 1, 2022, each "employer" (excluding the federal government or another state) is required to pay to the Secretary of Labor an annual payroll tax equal to 10% of the total wages paid to its employees in the State during the immediately preceding calendar year. When calculating the payroll tax payment, an employer may exempt (1) wages paid beyond the amount taxable for federal Social Security (FICA) purposes and (2) wages paid to an employee who is enrolled in or eligible for Medicare or receives federal benefits through TRICARE, or any other federal medical program.

An employer must pay the payroll tax to the Secretary on a periodic basis and submit periodic reports for the determination of the payroll tax due as required by the Secretary in regulations. An employer may not deduct the payroll tax, wholly or partly, from the wages of an employee.

HealthcareMaryland Commission

Beginning July 1, 2020, a 16-member HealthcareMaryland Commission is established. MDH must provide staff for the commission. A member of the commission may not receive compensation but is entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

The commission must provide recommendations for implementation of the HealthcareMaryland Program, including the financing, benefit package, rate structure, enrollment criteria, and provider requirements. The commission must establish subcommittees to address (1) financing; (2) benefits; (3) rates and reimbursements; (4) enrollment and provider criteria; and (5) program design. Each subcommittee must address specified topics related to the establishment and operation of the program.

By July 1, 2021, the subcommittees must report specified findings and recommendations to the commission. By December 1, 2021, the commission must report to the Governor and the General Assembly on regulatory and legislative recommendations to (1) implement the HealthcareMaryland Program and (2) establish a permanent HealthcareMaryland Commission. The commission terminates June 30, 2023.

Current Law/Background: The State provides comprehensive health care coverage through Medicaid and the Maryland Children's Health Program (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. As of January 2020, there were 1,248,216 individuals enrolled in Medicaid and 138,717 children enrolled in MCHP in Maryland.

The Federal Patient Protection and Affordable Care Act

The ACA requires nongrandfathered health plans to cover 10 essential health benefits (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 MHBE and (2) all qualified health plans offered in MHBE.

Employee Retirement and Income Security Act of 1974

ERISA contains a preemption clause stating that the Act "shall supersede any and all state laws insofar as they relate to any employee benefit plan." These benefits include health care. State reforms have often come into conflict with ERISA when they relate, directly or indirectly, to employee benefits. States cannot mandate that employers pay for health insurance, directly tax benefit plans, impose significant costs on plans, dictate the terms of an ERISA plan, or require reports on cost or use of the plans from employers. States are permitted to "regulate the business of insurance." A self-funded plan may not be regulated as insurance as ERISA specifies it is not an insurance plan.

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 bill, estimated to cost $330 billion to $400 billion per year, would have been funded with $200 billion outside current state and federal spending, a 15% payroll tax, and a 2.3% sales tax.

In December 2019, California Governor Gavin Newsom announced the launch of the Healthy California for All Commission to develop a plan for "advancing progress toward achieving a health care delivery system for California that provides coverage and access through a unified financing system." The commission will prepare an initial report for the California legislature by July 2020 and a final report by February 2021. The first commission meeting was held in January 2020.

State Revenues:

Payroll Tax

The bill requires each employer, beginning July 1, 2022, to pay an annual payroll tax equal to 10% of the total wages paid to employees in the State during the immediately preceding calendar year. An employer may exempt (1) wages paid beyond the amount taxable for FICA purposes and (2) wages paid to an employee who is enrolled in or eligible for Medicare or receives federal benefits through TRICARE, or any other federal medical program. Accordingly, special fund revenues increase significantly beginning in fiscal 2023.

Based on calendar 2018 data from the Quarterly Census of Employment and Wages and assuming 3.4% annual growth in wages, estimated total annual wages in Maryland in 2021 will be $164.2 billion. This figure excludes wages paid by the federal government. Based on this estimated wage base, a 10% payroll tax could generate *as much as* $16.4 billion in revenues in fiscal 2023. However, this figure will be reduced (potentially significantly) based on exemptions for wages above the FICA base. The taxable wage base for 2020 FICA purposes is $137,700 per employee, which would result in a maximum tax of up to $13,770 per employee. Actual revenues will be further reduced by exemptions for income earned by individuals eligible for or enrolled in Medicare or receiving benefits through TRICARE, or any other federal medical program.

Health Care Coverage Fund

In addition to any revenue received from the payroll tax, as discussed above, the fund consists of money appropriated in the State budget in an amount equal to the annual cost of State personnel health insurance costs as of 2019. The total costs for personnel administration, medical claims, prescription claims, dental, and contractual employee claims in fiscal 2019 for the State Employee and Retiree Health and Welfare Benefits Program was $1,812,169,742. Thus, revenues to the fund increase by *at least* $1.8 billion in fiscal 2023.

The fund also consists of specified savings achieved through streamlining, consolidating, or eliminating commissions, programs, or other units of State or local government, and

savings achieved by the State as a purchaser of pharmaceuticals or through negotiated reimbursement rates. The amount of any such savings cannot be reliably estimated at this time and are, therefore, not reflected in this analysis.

Other Impacts

This analysis assumes that, under the HealthcareMaryland Program, MHBE's Individual and Small Business Health Options Program exchanges will cease to operate and individuals currently covered through MHBE will be enrolled in the program. The Department of Legislative Services (DLS) notes that, in calendar 2019, 124,541 individuals enrolled in MHBE are eligible to receive federal advanced premium tax credits (APTCs) to offset the costs of their insurance premiums. The monthly value of APTCs to Maryland residents in February 2019 alone was $58.6 million. These tax credits will no longer be available to Marylanders under the bill; however, individuals will also not be required to purchase plans on their own. Maryland may be able to seek a federal waiver to retain this funding.

State Expenditures: This analysis assumes the following timeline for implementation:

- In fiscal 2021, the HealthcareMaryland Commission and its subcommittees develop recommendations for the financing, benefit package, rate structure, enrollment criteria, and provider requirements for the program.
- In fiscal 2022, the commission reports its regulatory and legislative recommendations to implement the program to the Governor and the General Assembly.
- In fiscal 2023, the Maryland Department of Labor (MDL) begins collection of a payroll tax, MDH creates an Office of Health Care Coverage, and the office and MHBE begin implementation of the HealthcareMaryland Program, with coverage beginning January 1, 2023.

HealthcareMaryland Commission

MDH advises that it can use existing budgeted resources to staff the commission and its five subcommittees; prepare the subcommittees' findings and recommendations for presentation to the commission by July 1, 2021; and prepare and submit the required report to the Governor and the General Assembly by December 1, 2021.

Payroll Tax

To administer the new payroll tax, MDL must establish a new payroll tax unit. Based on the personnel required to operate MDL's existing unemployment insurance (UI) contribution tax units (which are federally funded and cannot be used to collect and

administer a program other than UI), MDL advises that approximately 114 new employees are required for the new unit. In addition to hiring and training personnel, a payroll tax unit would require significant new information technology (including creation of a tax database) and the leasing of office space, among other costs.

MDL expenditures increase by $44.8 million in fiscal 2023, which accounts for the July 1, 2022 effective date of this provision. This estimate reflects the cost of hiring approximately 114 employees to administer a payroll tax and the first of four years of contractual information technology expenses (a total of $80.0 million, incurred as $30.0 million in fiscal 2023, and $25.0 million in both fiscal 2024 and 2025) to create the tax database. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	114
Information Technology Contract	$30,000,000
Salaries and Fringe Benefits	13,398,974
Rental Space	285,000
One-time Start-up Costs	557,460
Ongoing Operating Expenses	72,390
MDL FY 2023 State Expenditures	**$44,313,824**

As the Health Care Coverage Fund, which includes revenues from the payroll tax, can be used for any costs associated with the office and carrying out the program, including any administrative expense, this estimate assumes that special fund expenditures are used to support the payroll tax unit.

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. As noted above, contractual information technology costs continue in the amount of $25.0 million in both fiscal 2024 and 2025.

In addition, State expenditures (all funds) increase significantly due to imposition of the payroll tax on the State as an employer beginning in fiscal 2023.

Office of Health Care Coverage

The office must enroll in the program all Maryland residents who do not receive federal benefits through Medicare, TRICARE, plans that are subject to ERISA (self-funded employer health plans), or any other federal medical program. The office must collaborate with MHBE to enroll State residents in the program and ensure the availability of a web-based program for enrollment. As MHBE currently provides enrollment assistance through Maryland Health Connection for exchange enrollees and some Medicaid and

MCHP enrollees, this analysis assumes that MHBE develops and implements a system for enrollment.

Thus, MHBE special fund expenditures increase by an estimated $1.4 million in fiscal 2023, which accounts for the July 1, 2022 effective date of the bill's provisions establishing the office and the program. To develop the system, MHBE anticipates hiring at least 10 new staff (some contractual and some permanent, including a program manager, project manager, database management specialist, applications development expert, senior applications architect, testing specialist, subject matter expert, security specialist, network manager, and electronic data interchange specialist). Ongoing costs to maintain and operate the enrollment program are estimated to cost approximately $577,500 annually.

MVA advises that it can likely work with the office to provide data regarding eligible State residents through data-sharing agreements within existing budgeted resources.

HealthcareMaryland Program

As the specifics regarding financing, benefits, eligibility, enrollment and provider criteria, and program design for HealthcareMaryland will be determined based on the findings and recommendations of the commission, the cost to implement the program cannot be reliably estimated at this time.

For illustrative purposes only, total personal health care spending in Maryland for 2022 is projected to be $68.5 billion. Of this spending, $38.8 billion (56.6%) is attributable to federal health programs including Medicare ($15.9 billion), Medicaid ($17.6 billion), the Federal Employees Health Benefits Program ($2.4 billion), the Veterans Administration ($1.6 billion), and TRICARE ($1.3 billion). More than 3 million Marylanders received their health care coverage through these programs in 2018. Beyond these costs, additional costs would be incurred to provide full coverage to those who are currently uninsured (an estimated 350,200 Marylanders in 2018) and underinsured (an estimated 28% of insured adults in 2016).

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 Health Services Cost Review Commission already regulates hospital rates, which will account for 39% of estimated total health care spending in 2022. Thus, Maryland would likely not achieve as much savings as estimated in other states. Furthermore, any potential savings likely accrue over the long term rather than the short term.

Local Expenditures: Local government expenditures increase significantly beginning in fiscal 2023 due to imposition of the payroll tax on them as employers.

Small Business Effect: Small businesses are likewise affected by the payroll tax, with expenditures increasing beginning in fiscal 2023.

Additional Information

Prior Introductions: HB 378 of 2019, a substantially similar bill, received a hearing in the House Health and Government Operations Committee, but no further action was taken on the bill. HB 660 of 2018 received a hearing in the House Health and Government Operations Committee but was withdrawn.

Designated Cross File: None.

Information Source(s): Montgomery County; Maryland Association of Counties; Maryland Municipal League; Comptroller's Office; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Maryland Department of Health; Maryland Department of Labor; Maryland Department of Transportation; Maryland Health Benefit Exchange; Maryland Insurance Administration; Legislative Services; Department of Legislative Services

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