

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

Senate Bill 138 (Senator Kelley)
 Finance

Maryland Medical Assistance Program - Assisted Living Services

This bill requires Medicaid to reimburse for “eligible assisted living services” provided to an individual who is medically and functionally impaired if the Department of Health and Mental Hygiene (DHMH) determines that the individual meets specified medical and financial eligibility requirements.

Fiscal Summary

State Effect: General fund Medicaid expenditures increase by \$8.1 million in FY 2016 to provide assisted living services as required under the bill. Future years reflect additional enrollment, annualization, and inflation. Expenditures in all years reflect savings from avoided nursing facility services. Revenues are not affected. Federal matching funds are not available for assisted living services outside of a home- and community-based services waiver.

(\$ in millions)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	8.1	36.3	55.9	66.7	89.0
Net Effect	(\$8.1)	(\$36.3)	(\$55.9)	(\$66.7)	(\$89.0)

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

Local Effect: None.

Small Business Effect: Meaningful for assisted living facility providers who may continue to receive (State only) Medicaid funding without coming into compliance with federal regulations and potentially serve additional residents.

Analysis

Bill Summary: “Eligible assisted living services” means services provided by an assisted living program that (1) are not covered under the Medicaid home- and community-based services waiver; (2) are needed and chosen by an individual as an alternative to a nursing facility; (3) are part of a plan of service approved by Medicaid; (4) ensure the individual’s health and safety in the assisted living program; and (5) cost no more per capita in the assisted living program than in a nursing facility.

Current Law/Background: Maryland currently offers a Medicaid home- and community-based services waiver (Community Options) under a federal § 1915(c) waiver. Community Options allows older adults and people with disabilities to receive services while living in their own homes or assisted living facilities instead of in a nursing facility. To qualify for the waiver, individuals must require a nursing facility level of care and have income and assets no greater than 300% of Supplemental Security Income benefits. There are currently 4,500 waiver enrollees, about 1,500 of whom receive assisted living services. There are approximately 30,000 individuals on the waiver registry (waiting list).

Under Medicaid home- and community-based services waivers, an individual’s setting is a condition of waiver eligibility. On January 16, 2014, the federal Centers for Medicare and Medicaid Services (CMS) approved regulations that change the definition of the setting in which a person may reside to receive home- and community-based services. Under the new requirements, a setting must have certain qualities such as be integrated in and support full access to the greater community and be selected by the individual from among options. If the setting is provider-owned or -controlled, individuals must have (1) a lease or other legally enforceable agreement; (2) the ability to lock their doors, choose their roommates, and decorate their rooms; (3) freedom and support to control their own schedules and activities; (4) access to food at any time; (5) the ability to have visitors of their choosing at any time; and (6) a physically accessible location. The regulations allow providers who do not meet the new setting requirements an opportunity to provide services to Medicaid recipients under certain circumstances. Providers must develop a person-centered plan that outlines specific action steps, such as identifying assessed need and documenting less intrusive methods to satisfy such needs, in order to obtain an exception to the regulations.

The regulations contain a requirement that states submit a transition plan to CMS outlining how their preexisting waiver programs will come into compliance with the new setting definition. Although CMS expects states to transition to the new setting standards as soon as possible, it will allow a transition period. Maryland has drafted a plan to be submitted to CMS in March 2015. Pending approval, Maryland providers will have until March 2019 to come into compliance with the federal regulations or secure exceptions to continue serving specific residents due to individual needs.

If DHMH’s transition plan is approved, individuals currently receiving services under Community Options may remain in noncompliant settings until March 2019. If a facility does not come into compliance with the regulations or secure an exception for individuals to remain in the facility by that time, the individuals will either have to move to a compliant setting or lose their waiver eligibility. Individuals with higher incomes (those who qualify financially for the waiver but not for regular Medicaid) will lose all Medicaid services, while individuals who qualify for Medicaid outside of the waiver will lose only waiver services and will continue to receive other Medicaid services.

State Expenditures: General fund Medicaid expenditures increase by \$8,144,457 in fiscal 2016, which accounts for the bill’s October 1, 2015 effective date. This estimate reflects the cost of establishing a new, State-funded assisted living program and hiring 11 positions (1 grade 19 nursing program consultant/administrator and 10 medical care program specialists) to perform eligibility and enrollment activities. It includes salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, and the cost of providing assisted living services to enrollees.

Positions	11
Salaries and Fringe Benefits	\$550,777
Assisted Living Services	7,541,719
One-time Start-up Costs	47,135
Ongoing Operating Expenses	<u>4,826</u>
Total FY 2016 State Expenditures	\$8,144,457

The information and assumptions used in calculating the estimate are stated below:

- the 1,500 waiver participants currently receiving assisted living services continue to receive such services from their current provider through March 2019;
- 2,500 individuals currently on the waiver registry qualify for and enroll in the program within the first two years;
- 105 of these individuals are enrolled in the program each month beginning October 1, 2015, until enrollment reaches 2,500 in September 2017;
- in fiscal 2016, the annual cost of assisted living services per enrollee is \$23,725;
- federal matching funds are not available; thus, all expenditures are general funds;
- in March 2019, 150 of the 1,500 current waiver participants receiving assisted living services move to compliant settings to retain other waiver services, while the remaining 1,350 remain in noncompliant facilities and enroll in the program;

- expenditures are incurred for these 1,350 individuals for four months in fiscal 2019 (March through June) and all of fiscal 2020;
- expenditures are offset by savings from those individuals enrolled in the program who otherwise would enter nursing facilities, estimated at 50 additional individuals each year for a savings of \$36,000 each in fiscal 2016 (the general fund share of the cost of nursing facility services); thus, when inflation is factored in, the cumulative impact of these individuals enrolling escalates from \$1.8 million in savings for fiscal 2016 to almost \$9.6 million for fiscal 2020; and
- the cost of assisted living facility services and nursing facility services increases by 1.6% annually to reflect inflation.

Future year expenditures reflect full salaries with annual increases and employee turnover, annual increases in ongoing operating expenses, and annual inflation in the cost of assisted living services and nursing facility services. **Exhibit 1** displays general fund expenditures under the bill for fiscal 2016 through 2020.

Exhibit 1
General Fund Expenditures Under SB 138 of 2015
Fiscal 2016-2020
(\$ in Millions)

	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>	<u>FY 2020</u>
Assisted Living Services					
New Participants	\$9.3	\$39.2	\$60.7	\$62.2	\$63.5
Former Waiver Participants	0.0	0.0	0.0	11.2	34.3
Administrative/Personnel Costs	<u>0.6</u>	<u>0.8</u>	<u>0.8</u>	<u>0.8</u>	<u>0.9</u>
Subtotal	9.9	40.0	61.5	74.2	98.6
Savings from Nursing Facility Diversion	(1.8)	(3.7)	(5.6)	(7.6)	(9.6)
Total	\$8.1	\$36.3	\$55.9	\$66.7	\$89.0

Note: Numbers may not sum to total due to rounding.
Source: Department of Legislative Services

Additional Information

Prior Introductions: None.

Cross File: None.

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

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md/ljm

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